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ASSEMBLY, INTERIM COMMITTEE ON CRIMINAL PROCEDURE,

STATE CAPITOL BUILDING

SACRAMENTO 14, CALIFORNIA.

Legislature.

V.2  
ASSEMBLYMAN JOHN A. O'CONNELL,

CHAIRMAN.

SUB-COMMITTEE HEARING RE:

ALLEGED DISCREPANCIES AND

SUPPRESSION OF EVIDENCE RE:

BARBARA GRAHAM CONFESSION.

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REPORTERS TRANSCRIPT OF  
TESTIMONY AND PROCEEDINGS

✓ MARCH 28, 1960  
SACRAMENTO, CALIFORNIA

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1 ASSEMBLY INTERIM COMMITTEE ON CRIMINAL PROCEDURE  
2 STATE CAPITOL BUILDING  
3 SACRAMENTO 14, CALIFORNIA  
4 ASSEMBLYMAN JOHN A. O'CONNELL, CHAIRMAN  
5 SUB-COMMITTEE HEARING REGARDING {  
6 ALLEGED DISCREPANCIES AND SUP- {  
7 PRESSION OF EVIDENCE RE: BARBARA {  
8 GRAHAM CONFESSION.

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REPORTERS TRANSCRIPT OF TESTIMONY AND OF THE  
proceedings had before the Assembly Interim  
Committee on Criminal Procedure, State Capitol  
Building, State of California, held in Room  
4168 on the 28th day of March, 1960, beginning  
at the hour of 2:00 o'clock p.m. thereof.

19 COMMITTEE MEMBERS PRESENT: John A. O'Connell, Chair-  
20 man; Mrs. Pamela Thompson, Committee Consultant; Bruce F.  
21 Allen; Thomas Bane; Jerome R. Waldie; Nicholas Petris; Louis  
22 Francis; Vernon Kilpatrick; Robert W. Crown; and Terry Fury,  
23 Committee Secretary.

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1 MONDAY -- MARCH 28, 1960, 2:00 P.M.

3 CHAIRMAN O'CONNELL: Ladies and gentlemen, this is  
4 a continued hearing of the Interim Committee on the Criminal  
5 Procedure. You will recall that we met last Monday in this  
6 building and at that time we were going to hear testimony  
7 from Mr. Ed Montgomery relative to a transcript of certain  
8 testimony that was given to a representative of the Los  
9 Angeles District Attorney's office, the Los Angeles Police  
10 Department, the Burbank Police Department, and the San  
11 Francisco Police Department by one John True, who later  
12 testified at the trial of Barbara Graham, John Santo,  
13 and Emmett Perkins.

14 Some members of the Committee thought it would be  
15 proper to receive the testimony of Mr. Montgomery at this  
16 time, since no direct invitations had been extended to others  
17 who were present, or the persons who actually conducted the  
18 interrogation.

19 An invitation has been extended to all of the per-  
20 sons who were involved in that interrogation and also to  
21 Mr. J. Miller Leavy, who assisted the now Judge Alexander  
22 at the prosecution of those defendants.

23 I understand that Judge Alexander and Mr. Leavy are  
24 here, that Captain Coveney of the Burbank Police Department  
25 is also here. We have a letter from Detective LOvold of the  
26 Los Angeles Police Department who advises us that he is

4

1 unable to be present. Do we have the letter, I'd like to  
2 read it into the record. E. S. Lovold, I believe. It's a  
3 short letter.

4 This is a letter dated March 24, addressed to me  
5 as Chairman of this Committee. This is signed by Edmund S.  
6 Lovold, Lieutenant, Los Angeles Police Department. It reads  
7 as follows: "In answer to your letter of March 23rd, please  
8 be advised that I do not have the original statement made by  
9 John True on June 4, 1953, and I do not know if the informa-  
10 tion was made available to any of the defendants or their  
11 attorneys.

12 I will be unable to attend the hearing in Sacramento,  
13 March 28th, as there are no funds available to defray the  
14 expense that would be incurred."

15 In connection with the testimony that we did hear  
16 last week relative to the question of whether or not Barbara  
17 Graham at any time did make a confession of her crime to the  
18 late Harley Teets, an invitation was also extended by me to  
19 Mr. Louis Nelson, the Associate Warden of San Quentin Prison.  
20 We received this morning a letter from Mr. Nelson indicating  
21 that he was unable to be present. I'd like to read that  
22 letter also.

23 This is a latter dated March 25, from Mr. Louis S.  
24 Nelson, Associate Warden, Custody, San Quentin, California.  
25 It's addressed to me as Chairman of the Committee and reads  
26 as follows:

1                    "I am deeply grateful for your letter of March 23,  
2 1960 offering me an opportunity to testify before the  
3 Assembly Committee on Criminal Procedure. I would certainly  
4 welcome the opportunity to testify if I felt that in so doing  
5 I could shed any further light on an issue which has ap-  
6 parently been clouded by many statements. I regret that I  
7 have nothing new which would add to what I have already  
8 said relative to the alleged confession made by Barbara  
9 Graham. It appears to me that the time and expense involved  
10 would far outweigh any positive benefits that might accrue  
11 as a result of my testimony. If you feel my testimony es-  
12 sential, I of course should be happy to give it.

13                    "I am enclosing for the attention of the Committee  
14 a copy of a letter which I wrote to Mr. William H. Walker,  
15 15437 Elmbrook Drive, La Mirada, California, who is represen-  
16 ted as being a staff photographer on the Los Angeles Herald  
17 Express. There is nothing to be added to the facts I set  
18 forth in this letter, except that I have been able to fix  
19 the time when Mr. Harley O. Teets made this statement to me.  
20 It was on October 23, 1956. I am willing to testify under  
21 oath that the statements made by me in the letter to Mr.  
22 Walker are true to the best of my knowledge and belief. I  
23 could add nothing more.

24                    "As to the circumstances which prompted me to make  
25 this statement, I could only say the following: Sometime  
26 during the autumn months of 1959, I was called from my office

1 to that of the Warden, where I found Mr. F. R. Dickson,  
2 Warden, and Mr. W. O. Weissich, District Attorney of Marin  
3 County. Mr. W. O. Weissich had asked me whether or not Mr.  
4 Teets had related to me the fact that Barbara Graham had  
5 confessed to him her part in the killing of Mrs. Monahan.  
6 I answered that he did. No previous revelation had been  
7 made by me, nor had I discussed the matter with anyone  
8 previously.

9 "Again, may I add my gratitude for being invited to  
10 appear before your Committee. I hope that the material I have  
11 furnished you in this letter and attachment will adequately  
12 serve the purpose."

13 The letter referred to Mr. William Walker was dated  
14 November 6, 1959, and reads as follows:

15 "Dear Mr. Walker, I have received your letter of  
16 October 26, 1959, relative to a conversation I had with the  
17 late Harley O. Teets, then Warden of San Quentin Prison. In  
18 connection with this conversation it must be borne in mind  
19 that my recollection is hazy regarding distinct times and  
20 therefore I can only relate the gist of the conversation.  
21 Some time during the year 1956, I was in the office of the  
22 late Warden Teets, and our conversation centered, as it often  
23 did, around the men on Condemed Row. Particular discussion  
24 was held regarding an inmate who was on Condemed Row at that  
25 time who had confessed to me the details of his crime and which  
26 I related to the Warden. We discussed whether or not such

1 details should be made the part of a person's record, and  
2 it was the decision of the Warden at that time that little if  
3 any benefit would obtain from the revelation of the confes-  
4 sion. At that time the Warden told me that he had been  
5 carrying around a confession from the late Barbara Graham  
6 relative to the killing of Mabel Monchan. He told me that  
7 Barbara Graham had confessed to him how she had pistol-  
8 whipped Mrs. Monchan until she was dead. The details rel-  
9 ative to the commission of the crime I do not remember.

10            "I related this confidence to no one until recently  
11 when it was brought out that Mr. Teets had made a similar  
12 statement to the District Attorney of Marin County nearly a  
13 year later. I am only willing to repeat it now to corroborate  
14 the story related by Mr. Weissich. I trust you will under-  
15 stand my position in this matter, but since you have asked  
16 the question, and I have been given permission to answer, the  
17 above are the facts to the best of my recollection."

18            Now, we have had various statements made on the  
19 question of when, where, how, and if this confession was  
20 made. The only person who we have not heard from who has  
21 some knowledge of the distance of the confession is Mr.  
22 Leavy, and I thought that I would afford him the opportunity  
23 at this time, if he wished to, to tell the Committee anything  
24 he might want in connection with this confession.

25            I don't want to belabor the issue, but I think we  
26 have more important things to go into this afternoon.

1 However, if Mr. Leavy wishes to come forward and make a  
2 statement on that matter only, at this time we will be happy  
3 to hear him.

4 Mr. Burton?

5 MR. BURTON: I'd like to say that I am disappointed  
6 that Mr. Nelson didn't appear today. If we had wanted to  
7 receive his testimony by way of a letter to the Committee,  
8 I think the Committee would have requested it. I myself  
9 expected him to be here, and I'd like to note for the record  
10 that I am disappointed that Mr. Nelson has seen fit not to  
11 attend.

12 CHAIRMAN O'CONNELL: I may say that I did not sub-  
13 poena the presence of Mr. Nelson because I felt that no use-  
14 ful purpose would be served by re-hashing of this question  
15 of the confession. I am extending this opportunity to Mr.  
16 Leavy because he is here and because his name has been used  
17 in connection with the confession. I thought it would be  
18 only fair to him to let him say anything that he might want  
19 to say, if he wanted to say it.

20 MR. BURTON: Well, I'd just like to note that Mr.  
21 Nelson does work for the State, I would think that a mere  
22 invitation from this Committee would be enough to have him  
23 attend. I would not imagine it would be necessary to sub-  
24 poena him, and I myself am not satisfied with the nature of  
25 the correspondence given to us, it makes a lot more sense  
26 to me to have this Committee hear the testimony first-hand

1 from Mr. Nelson and permit us the opportunity to cross-  
2 examine him, and I am not pleased with his failure to appear.

3 CHAIRMAN O'CONNELL: All right, the record will  
4 show that. Mr. Allen.

5 MR. ALLEN: I am sure that if any purpose in having  
6 Mr. Nelson here would be served, the Department would produce  
7 him. It's just on a request of Mr. McGee, I don't think we  
8 even need a subpoena. It's just questionable whether the  
9 Committee wanted him.

10 CHAIRMAN O'CONNELL: Well, Mr. Nelson's letter  
11 indicates that if we want him to come, he will come.

12 MR. ALLEN: May I inquire if Judge Alexander is  
13 present?

14 CHAIRMAN O'CONNELL: Yes, he is. Mr. Crown.

15 MR. CROWN: Did you ask Mr. Nelson to come?

16 CHAIRMAN O'CONNELL: I wrote him a letter by regis-  
17 tered mail, with a return receipt requested, as I did every-  
18 body else who was invited to be here this afternoon.

19 MR. CROWN: Did he reiterate in the letter the  
20 circumstances of the alleged confession?

21 CHAIRMAN O'CONNELL: I just read his letter.

22 MR. CROWN: I didn't hear it.

23 CHAIRMAN O'CONNELL: The gist of it is that he  
24 now recalls the exact date on which Warden Teets related this  
25 alleged confession to him, and he fixes it as October 23rd,  
26 1956.

1                   MR. CROWN: Just for the record, I would like to  
2 share with Mr. Burton my own unhappiness that he has seen fit  
3 not to be here.

4                   MR. O'CONNELL: Mr. Burton?

5                   MR. BURTON: To pursue this, I would like to have  
6 the staff directed to ask Mr. Nelson how he refreshed his  
7 memory so accurately as to pinpoint the date of October 23,  
8 1956, especially if he has a written memorandum that deals with  
9 this conversation that was compiled on or about the 23rd of  
10 October, 1956. If he has not, then by what method was he  
11 able to pinpoint this date.

12                  If he does have the memorandum, that he forward this  
13 memorandum to the Committee so we have an opportunity to look  
14 at it ourselves.

15                  CHAIRMAN O'CONNELL: Mr. Kilpatrick.

16                  MR. KILPATRICK: I would like to oppose the sugges-  
17 tion by Mr. Burton.

18                  CHAIRMAN O'CONNELL: Stand and be sworn, please.

19  
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22  
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7 MR. LEAVY: Leavy, L-e-a-v-y, first name, J.  
8 Miller.

9 CHAIRMAN O'CONNELL: At this time, you will be given  
10 an opportunity to --

11 MR. LEAVY: Discuss the other things?

12 CHAIRMAN O'CONNELL: Later. I thought we might as  
13 well get this matter of the confession out of the way before  
14 going into the other matters. I just wanted to give you this  
15 opportunity to say whatever you wish.

16 MR. LEAVY: I would attempt to fill in the Committee  
17 as best I can chronologically as to how and in what manner  
18 the knowledge of the confession of Barbara Graham concerning  
19 her participation in the Monohan <sup>murder</sup> was made known to Harley O.  
20 Teets.

Beginning last June, the latter part of June, of  
last year, at the District Attorney's convention, at one of  
the dinner tables was seated on my left Fred Drucker, who was,  
as I recall, one of the Deputy District Attorneys from  
Alameda County and also the legislative advocate for the  
District Attorneys Association. On my right was Bill

1 Weissich. Fred Drucker in substance said that he could, he  
2 wished that I would, I guess, do something about the motion  
3 picture, Susan Hayward's, "I Want to Live," because he was  
4 getting arguments from Assemblymen concerning capital punish-  
5 ment, they were in favor of abolitionment because they be-  
6 lieved that the movie in effect was a document and certainly  
7 weren't going to subscribe to the State of California con-  
8 victing and executing innocent persons.

9 Now, I explained to him, I said I would do everything  
10 I could, I had appeared on Paul Coates' TV show in answer to  
11 Ed Montgomery. I had furnished the transcript and things to  
12 a man who had written an article in a magazine to point out  
13 that the motion picture was not factual as it claimed.

14 Bill Weissich, as I say, was seated on my right,  
15 and it is my recollection that he recited to me for the first  
16 time then that, "Did you know that Barbara Graham confessed  
17 to Harley O. Teets her participation in the Monahan murder?"  
18 I said, "No." I told Bill, I said, that it seemed to me that  
19 it would be documented at the penitentiary, one of us should  
20 check and see, that would be interesting to know.

21 Well, I asked Bill to see, or check it when he got  
22 back. I couldn't see Bill every day, I see him at a District  
23 Attorney's convention, or occasionally here and there. As  
24 time passed on, I heard nothing from Bill Weissich, but I  
25 went to the State Penitentiary on August 21st of last year  
26 to witness the Stephen Nash execution.

1                   While there, I purposely asked Warden Hoffa for an  
2                   audience. I explained the situation to him that I had heard  
3                   Barbara Graham had confessed. Now, I can't recall whether I  
4                   told him she had confessed to Harley O. Teets and he had told  
5                   District Attorney Weissich or not. I know I told him in sub-  
6                   stance that I understood she had confessed to Teets.

7                   And I told him that I was interested to learn whether  
8                   the subject matter had been documented at the Penitentiary.  
9                   He called in a woman, I am not sure of her name. I believe  
10                   her name is Miss Mallory.

11                   In any event, I was told she had been a personal  
12                   secretary to Harley O. Teets. I explained my purpose,  
13                   I felt that the motion picture had made a black mark on the  
14                   administration of justice in California, the picture, "I  
15                   Want to Live," and that if it was true that Barbara Graham  
16                   had confessed to Harley O. Teets, I would like to find out,  
17                   and he assured me, as did Miss Mallory, that the matter --

18                   CHAIRMAN O'CONNELL: Mr. Leavy, I am informed that  
19                   you can't be heard in the audience. If you would be seated  
20                   and talk into the microphone, please.

21                   MR. LEAVY: I was informed by Associate Warden  
22                   Hoffa that it wasn't documented there at the penitentiary,  
23                   and at that time, may I say, I did not know then that Barbara  
24                   Graham had told this, or rather that Barbara Graham had  
25                   told the confession to Teets and Teets had told it to Nelson.  
26                   I knew Weissich knew about it, but I also knew that Weissich

1 was not about to go out on a limb by himself. So I went back  
2 to Los Angeles and contacted Mr. William W. Walker, who had  
3 already, for some months, been attempting to write the true  
4 story on the Barbara Graham case. I told him about it, and  
5 he was going into the Bay area in October, and I gave him a  
6 letter of introduction to Bill Weissich, setting out the entire  
7 purpose. It's a letter dated October 2, 1959.

8 Now, of course, Bill Weissich, gave him an audience,  
9 and I don't know what they said, except by hearsay.

10 However, I heard the Chairman, Mr. O'Connell, read  
11 a letter dated November 6, 1959, from Louis Nelson to William  
12 Walker. I have a copy of that letter. It was sent to me,  
13 apparently made known to Warden Dickson.

14 MR. BURTON: What was the date of this letter?

15 MR. LEAVY: November 6, 1959. I can give you an  
16 entire copy of the correspondence I am speaking of here.

17 MR. BURTON: Would you read the letter to the  
18 Committee for the record, the letter of introduction?

19 MR. LEAVY: Yes. October 2, 1959. Of course, this  
20 is a copy of my copy and doesn't carry my letterhead.

21 "William O. Weissich, District Attorney of Marin  
22 County, San Rafael, California. Dear Bill: May I introduce  
23 Mr. William W. Walker, a personal friend of mine for many  
24 years. He is a photographer for the Los Angeles Evening  
25 Herald and Express. Bill also is a capable story-writer and  
26 has written a number of articles which have been published.

1 He wrote the article in the April issue of Cavalier Magazine  
2 exposing the Barbara Graham story "I want to Live."

3 "Bill Walker is now preparing to write, in collabor-  
4 ation with me a factual story of the Santo-Perkins-Graham  
5 murder of Mabel Monahan, having as one of its objectives the  
6 education of the public that Barbara Graham was not innocent.  
7 Recalling my conversation with you at the District Attorneys'  
8 convention last June with regard to the late Harley O. Teets  
9 having told you that Barbara Graham in substance admitted to  
10 him her guilt, it would be helpful in the preparation of the  
11 article to include this circumstance. You stated to me that  
12 Warden Teets repeated the information to you. For this  
13 reason I would appreciate it if you would give Bill Walker an  
14 audience.

15 "If you can, in the interest of justice, see your  
16 way clear to relate to Bill Walker the conversation you had  
17 with Teets, fixing the time and place as near as possible  
18 and to permit the use of your name in any article, story,  
19 book, etc., that may result, it is my opinion it would consid-  
20 erably enhance the value of the article from the reader's  
21 viewpoint.

22 "When I visited San Quentin in August to witness the  
23 Nash execution, I talked to Associate Warden Hoffa and one  
24 of the secretaries who worked closely with Warden Teets to  
25 determine whether there was any record or document of a  
26 conversation that he might have had with Barbara Graham. I

1 was informed there is none.

2                   "With kind regards, yours very truly," and my name  
3 and title.

4                   Now, as I say, following that a letter was received  
5 and it's only hearsay from me, as I recall, Bill Walker used  
6 this same letter of introduction to Weissich as a letter of  
7 introduction and correspondence to Louis Nelson, which brought  
8 forth the letter of November 6, 1959, from Louis S. Nelson  
9 to William Walker.

10                  Following that, as the Committee I believe has  
11 read into the record, I received a copy of a letter to William  
12 Walker from William Weissich.

13                  CHAIRMAN O'CONNELL: We received that last week.

14                  MR. LEAVY: Yes, and that's the one dated December  
15 15th, 1959. Now, following that, why, of course, I had the  
16 information there was no place to publish it because the  
17 book hadn't been written. I did enlist the aid of State  
18 Peace Officers through Thad Brown, to attempt to encourage  
19 or solicit Congressman Oren Harris to investigate the  
20 Motion picture, "I Want to Live," as having been a fraud upon  
21 the public. You might say in the same nature as rigged  
22 television.

23                  I prepared a letter to Thad Brown for the Peace  
24 Officers Association of the State of California, pointing  
25 out in substance how the movie was a fraud upon the public  
26 and a black mark upon the administration of justice in

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1 California. It was my hope that perhaps the congressional  
2 investigators would inquire as to how a motion picture  
3 could be advertised as factual on a true story, based upon  
4 the evidence at the trial and go away making people believe  
5 that California had executed, let alone convicted, an inno-  
6 cent woman and if they had inquired into that matter, I would  
7 have made material that I had at that time available to them,  
8 but they never asked me.

9 I never, of course, realized that a special session  
10 of the Legislature would be called again this month to re-  
11 consider the capital punishment, and when I was here that  
12 afternoon at one of the recesses, Chief William H. Parker,  
13 of the City of Los Angeles Police Department, called me aside  
14 and said, "I understand you know something about a confession  
15 Barbara Graham made?" And I said, "Yes, I do." He said,  
16 "I think it should be brought out here." I said, "It's all  
17 right with me. I was only hoping that perhaps if there is  
18 no other place, you publish it in some book or publication  
19 so that world could know about it, but if you feel it should  
20 be brought out here, I'll bring it out." He said, "Can  
21 you back it up?" I said, "Yes, I can. There is a man in the  
22 audience who will back it up. Bill Weissich over there."  
23 So he left my presence for a moment, he asked me, Bill Parker  
24 asked me, if you are asked a question will you answer it?  
25 I said, "I will." He left my presence and returned and he  
26 said, "You will be asked the question."

1                   I went in and told Bill Weissich, I says, they are  
2 going to ask about Barbara Graham's confession to Harley  
3 Teets in which she admitted her participation in the Monahan  
4 murder. I says, "I am going to name you."

5                   He says, "All right. Name Louis Nelson." "I  
6 certainly will," and when Senator Regan asked me the question,  
7 I think you have the record that I answered it.

8                   CHAIRMAN O'CONNELL: Do you recall the exact ques-  
9 tion that Senator Regan asked you?

10                  MR. LEAVY: No, I don't, but it was a somewhat com-  
11 pound statement and question and perhaps I should have, as a  
12 lawyer, I should have said what part I was answering, but I  
13 believe my statement was intended, and I don't think Senator  
14 Regan intended to convey to anyone or to newspapers, I read  
15 in newspapers later that some people got the impression the  
16 confession was a last-minute thing.

17                  MR. BURTON: That was a surprise to you, wasn't it,  
18 Mr. Leavy? That some people got the impression that it was  
19 a last-minute confession, when you got the press account?

20                  MR. LEAVY: I knew from my material and the only  
21 information I had on it was what Louis Nelson and Weissich  
22 told me orally and in the letter, and of course, I knew it  
23 was not, so far as what they told me, a last-minute confes-  
24 sion. I didn't know when it occurred and that the corres-  
25 pondence showed. That is correct.

26                  CHAIRMAN O'CONNELL: Your answer to Senator Regan's

1 question failed, as I read it, to deny that the confession  
2 was made immediately prior to the execution. As I understand  
3 your testimony today, that was an inadvertence on your part  
4 in failing to distinguish the time the confession was made  
5 because you didn't know when it had been made when you gave  
6 your answer to Senator Regan?

7 MR. LEAVY: All I knew about when it was made was  
8 what Weissich and Louis Nelson had told me. Of course, they  
9 do not specify or say it was a last-minute confession. And  
10 if there was a misunderstanding, it was in the form of  
11 Senator Regan's statement, and I am sure he didn't intend to  
12 mislead anybody, nor did I. Because I could not say it was  
13 a last-minute confession, and if you want to call it an  
14 inadvertence, I suppose it could be. I was hoping they  
15 would call Bill Weissich, as I invited the Committee. I  
16 said, you can better learn about this from Bill Weissich.

17 If it created that impression, it was unfortunate  
18 because as you have now learned from Mr. Nelson, he does not  
19 fix it as a last-minute confession to him, nor does Bill  
20 Weissich.

21 CHAIRMAN O'CONNELL: Mr. Crown first and then Mr.  
22 Waldie.

23 MR. CROWN: Mr. Leavy, just a few seconds ago you  
24 said you knew it was not a last-minute confession. Now, do  
25 I take it from your later statements that you don't <sup>mean</sup> mean  
26 that?

1                   MR. LEAVY: Well, I understand, neither Bill Weissich  
2 nor Louis Nelson say that Harley Teets said it was a last-  
3 minute confession.

4                   MR. CROWN: Yes, but there is a considerable differ-  
5 ence between saying you don't know when it was made and saying  
6 that you knew it was not a last minute confession, you can't  
7 say that?

8                   MR. LEAVY: Not from what they tell me. I only know  
9 what they tell me, I think I should put it that way more  
10 properly. When I say they, I say Weissich and Mr. Nelson.

11                  MR. CROWN: Well, did they tell you that they knew  
12 it was not a last minute confession?

13                  MR. LEAVY: They didn't say one way or another,  
14 it's just in the letter as you have it here. You have more  
15 complete information from Louis Nelson, I think now, as to  
16 when he fixes the date.

17                  CHAIRMAN O'CONNELL: That's the date that he fixes  
18 as the date that the late Warden Teets told him, but there is  
19 nothing said about what the nature of the information imparted  
20 by Warden Teets to him, Nelson, was.

21                  MR. CROWN: I assume that Teets -- of what Nelson  
22 and Weissich know, they don't know one way or the other.

23                  CHAIRMAN O'CONNELL: But if you gave the impression  
24 to the Senate Committee that the confession was made imme-  
25 diately prior to the execution, you didn't intend to give  
26 that impression?

1                   MR. LEAVY: Definitely not. I don't think that  
2 Senator Regan intended to make his statement lead one to  
3 believe that.

4                   CHAIRMAN O'CONNELL: Mr. Waldie.

5                   MR. WALDIE: Mr. Leavy, did you say the first time  
6 that you received knowledge of this confession was in June,  
7 1959?

8                   MR. LEAVY: That's my recollection, yes.

9                   MR. WALDIE: Did you have any conversations with  
10 Mr. Weissich prior to June of 1959 about this Barbara Graham?

11                  MR. LEAVY: Not to my recollection, Mr. Waldie.

12                  MR. WALDIE: Perhaps -- I wonder if this might  
13 refresh your recollection. Mr. Weissich testified last  
14 time he was here in answer to that question that he was going  
15 into the point which may be a collateral issue in this matter,  
16 but it's a very important one to the public, and it is one  
17 raised by the newspapers in the area, and that was the  
18 propriety of holding back that information to a time that  
19 appeared to be opportune and then release it.

20                  In other words, the first time the information was  
21 released publicly was at the capital punishment hearings  
22 and there was a question as to whether this was in good taste  
23 and so, in expanding this and attempting to find out how  
24 widespread this knowledge was, Mr. Weissich said he had held  
25 it in confidence because he had felt a moral obligation to  
26 do so to Warden Teets and that he did not break this moral

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1 obligation until such time as Mr. Nelson revealed it. There  
2 is a little bit of conflict here because he, Mr. Nelson, said  
3 he also said he felt the moral obligation to withhold this  
4 information, but he gave up his moral duty when Mr. Weissich  
5 revealed it.

6 So upon that line of questioning, we asked Mr.  
7 Weissich then to divulge to us to whom he had released that  
8 information and you happen to be the primary person to whom  
9 he revealed it other than his wife and his Chief Deputy, and  
10 he said under oath, in the transcript, that the first time  
11 that he released it to anyone other than his wife and his  
12 deputy was to you in February of 1959 in casual conversation  
13 at the District Attorney's meeting in Fresno, I mentioned  
14 this to Miller Leavy for the first time.

15 And he later said, "I then again saw Mr. Leavy in  
16 June of '59 at another District Attorney's meeting and he  
17 again asked me to try to find corroboration."

18 Now, does that refresh your recollection, did he  
19 mention it to you in February of 1959?

20 MR. LEAVY: No, Mr. Waldie. I am giving you my  
21 recollection as I remember it. As I told you, I recall the  
22 incident of Fred Drucker on my left and Bill Weissich on  
23 my right. Maybe Mr. Weissich is right, it's a question of  
24 memories.

25 MR. WALDIE: Do I also understand that at the time  
26 he released this information that Mr. Drucker was present and

1 overheard the information?

2 MR. LEAVY: That's my recollection. He was seated  
3 on my left.

4 MR. WALDIE: Was there anyone else present that you  
5 know of to whom this information was given?

6 MR. LEAVY: Well, there were other people present  
7 around the table, but I can't tell you who was there.

8 MR. WALDIE: Were they all within hearing of this  
9 information?

10 MR. LEAVY: They may have heard it or may not, I  
11 don't know. I do remember this incident, that of course  
12 does stick in my memory.

13 MR. WALDIE: Then do you know how Chief Parker  
14 acquired knowledge of this information. Let me ask you this.  
15 When Mr. Weissich released it to you, did he say that he  
16 was under a moral obligation to keep this in confidence and  
17 requested that you honor this confidence?

18 MR. LEAVY: Well, I gathered from Mr. Weissich that  
19 he didn't want to tell anybody if he was the only one who  
20 knew or if it wasn't documented. That's what I attempted to  
21 find out if it was documented, because I more or less  
22 appreciated Mr. Weissich's position.

23 MR. WALDIE: His reluctance, as you understood it,  
24 to disclose, was not that he felt a moral obligation to  
25 Harley Teets, it was because it couldn't be documented, is  
26 that your understanding?

1                   MR. LEAVY: Well, I felt -- he felt that he just  
2 didn't want to be there alone because he didn't know whether  
3 anyone would believe him alone. Of course, I kind of felt  
4 the same way. I felt that it would be documented at the  
5 penitentiary and that's why I -- I told you --

6                   MR. WALDIE: Then you didn't gather that he felt  
7 under any moral compulsion to honor any confidence that the  
8 Warden had given him?

9                   MR. LEAVY: Oh, I think he recognized the confidence,  
10 but by this time there was a motion picture that had been  
11 released that was seriously attacking the administration of  
12 justice in California, and I think he was torn between that  
13 and his confidence. Now, you are just asking for my opinion,  
14 that's all, nothing he said.

15                  MR. WALDIE: Was there any particular reason other  
16 than Chief Parker's suggestion to you that this information  
17 be revealed at this time?

18                  MR. LEAVY: Frankly, when I came up to discuss  
19 capital punishment to the Senate Committee, I had no plan  
20 of releasing this information. If I had, I think I would have  
21 been prepared with some copies of the correspondence I had,  
22 because I don't know where Chief Parker got his information.  
23 You will have to ask him about that. He just told me he  
24 knew, and I am not about to lie to Chief Parker or anybody  
25 else.

26                  CHAIRMAN O'CONNELL: Mr. Burton.

1                   MR. BURTON: Mr. Leavy, the question you were asked was  
2 not compounded, it was a simple one. It was a leading one,  
3 but a simple one. It states in pertinent part, "Do I under-  
4 stand from what I have heard that you have some information  
5 concerning statements made by Barbara Graham immediately prior  
6 to her being put to death, which was not thereafter  
7 disclosed." That's not a compound question, is it?

8                   MR. LEAVY: Well, the "immediately," of course, is  
9 what I would not have answered yes to, but it's information  
10 concerning a statement Barbara Graham made, and my answer is  
11 yes to that, I have such information.

12                  MR. BURTON: You have done some trial work, have you  
13 not?

14                  MR. LEAVY: About 25 years of it.

15                  MR. BURTON: Well, you understand the problems created  
16 if any witness answers a leading question without qualifying  
17 the answer, to cut from the leading question those parts which  
18 are inaccurate, you understand that problem that any witness  
19 has, do you not?

20                  MR. LEAVY: Oh, yes, but this was not a trial. This  
21 was a Senate hearing, or an Assembly hearing, and my first.

22                  MR. BURTON: And you felt that your answer was  
23 essentially a complete one and not misleading at the time you  
24 gave it?

25                  MR. LEAVY: I didn't realize it was misleading. I  
26 assumed from my entire statement, and from the questions I was

1 asked, that what information I relied upon was from Louis  
2 Nelson and Weissich and I think I invited the Committee to  
3 call Mr. Weissich.

4 MR. BURTON: Going into your statement on Page 2 of  
5 the mimeographed text of your statement, the second line,  
6 you state, "that Barbara Graham, before her execution, con-  
7 fessed to Warden Teets." That statement, in light of the  
8 wording of this question, would tend to reinforce the belief  
9 that this was a last-minute confession, would it not?

10 MR. LEAVY: It wasn't intended so. I assume some  
11 people got that impression, because I read in some of the  
12 papers that it read as such. But it wasn't intended to  
13 convey that idea.

14 MR. BURTON: May I ask you this question. Do you  
15 recall having talked to Mr. Walker, who wrote this article  
16 that appeared in April, 1959, in this magazine, is that  
17 correct?

18 MR. LEAVY: It did appear in that issue, yes.

19 MR. BURTON: Did you talk to Mr. Walker, and for the  
20 benefit of the Committee, the chronology would be, could well  
21 be this that Mr. Weissich's testimony under oath is accurate,  
22 that he disclosed the Graham confession to you in February of  
23 1959; the article appeared some two months later in publica-  
24 tion.

25 CHAIRMAN O'CONNELL: That doesn't square away,  
26 Mr. Burton.

1 I think it was testified that that magazine was  
2 an April issue, but it was released in February.

3 MR. BURTON: That was the next question, I wanted  
4 to put that question in that time context. Did you talk to  
5 Mr. Walker at any time prior to this publication about this  
6 conversation you had with Mr. Weissich?

7 MR. LEAVY: No, I didn't have it. It's quite likely  
8 that if we had had this information, it might have gone  
9 into the magazine article. I don't know, that's why -- I  
10 couldn't have had it then because I think I would have made  
11 it available to Mr. Walker for that purpose.

12 MR. BURTON: If you feel free, would you mind --  
13 did you have any financial understanding with Mr. Walker as  
14 to, as related to the compiling of the article in this mag-  
15 azine?

16 MR. LEAVY: No, I have no financial interest in  
17 that whatsoever. I made the transcript available to him  
18 and that, whatever material he wanted, I have no financial  
19 interest in that whatsoever.

20 MR. BURTON: Do you have any financial understanding  
21 or interest in this book that you stated you were going to  
22 collaborate with Mr. Walker on?

23 MR. LEAVY: We have nothing in writing. We have  
24 discussed that if and when its saleable, we then will draw  
25 up something in writing, share in some manner, but there is  
26 nothing in writing.

1                   MR. BURTON: Then, as I understand it, you don't  
2 have any financial understanding as related to the magazine  
3 article, but you do have a tentative financial arrangement  
4 in the event a book is written and published, is that correct?

5                   MR. LEAVY: Yes, we have an understanding.

6                   MR. BURTON: Would I be correct in concluding from  
7 your testimony that you had intended to explode this revela-  
8 tion, that for the first time, when the book hit the press  
9 or stands, if it were ever written and published?

10                  MR. LEAVY: Well, I think it would have been made  
11 known by me to the head of my department first; however,  
12 it would be published in the book.

13                  MR. BURTON: Had you made it known to the head of  
14 your department prior to your coming to Sacramento?

15                  MR. LEAVY: No, I had not.

16                  MR. BURTON: But you would have waited until some  
17 later time to inform the head of your department?

18                  MR. LEAVY: Correct.

19                  CHAIRMAN O'CONNELL: Just one more question. Did you  
20 read or hear about the statement made by Erle Stanley Gardner  
21 concerning a conversation that he had had with Harley Teets  
22 relative to the Barbara Graham case?

23                  MR. LEAVY: It appeared in the Los Angeles Mirror,  
24 I think, a day or two ago. The Mirror News.

25                  CHAIRMAN O'CONNELL: Is it your understanding that  
26 Mr. Gardner said that -- well, I will read you what he said,

1 as quoted in the San Francisco Examiner.

2 MR. ALLEN: Mr. Chairman, I got a letter from Mr.  
3 Gardner, maybe you'd like to read what Mr. Gardner said.

4 CHAIRMAN O'CONNELL: All right.

5 MR. ALLEN: It might give us a better record when  
6 you quote directly from the letter.

7 CHAIRMAN O'CONNELL: This is a letter from Erle  
8 Stanley Gardner, dated March 24, addressed to Assemblyman  
9 Bruce Allen. It says, "Confirming my telephone conversation  
10 with you of a few minutes ago, I was collecting material on  
11 capital punishment in June 1f 1957. I had a conference with  
12 Harley Teets on that date. We discussed various phases of  
13 capital punishment in a conference which lasted for some time.

14 "As a member of the Court of Last Resort, I had been  
15 asked by several persons to investigate the case of Barbara  
16 Graham prior to her execution. I was, therefore, interested  
17 in that case and asked Warden Teets something about it.

18 "Mr. Teets told me that at that time he thought  
19 Barbara Graham was guilty because of a confidential communica-  
20 tion which had been made to him. I asked him for details and  
21 he said, in effect, that all he knew about it personally was  
22 that he had had an interview with Perkins in Death Row, that  
23 Perkins had said to him that if the warden ever released the  
24 information or quoted him on the subject, Perkins would deny  
25 the interview, but that Barbara Graham had been involved in  
26 the case.

1            "I cannot remember the exact words Warden Teets  
2       quoted Perkins as having used, but my recollection is that  
3       the words indicated Barbara was 'in on it' but fell short of  
4       stating she had committed the murder.

5            "I know very definitely that Warden Teets did not at  
6       that time even intimate there had been any confession from  
7       Barbara Graham. He stated very definitely that all he knew  
8       about it personally was this statement that had been made to  
9       him by Perkins. However, the statement had been made in  
10      such a convincing manner that Warden Teets showed very plainly  
11      he was convinced, and as I remember it, stated frankly that  
12      he was convinced of Barbara Graham's guilt.

13           "Now, for what it may be worth, at a time which I  
14       cannot recall offhand at the present moment but which I could  
15       probably verify by consulting my business records, Sam Nicks  
16       and I had a conversation with Harold Jackson in Folsom prison.

17           "Jackson, you remember, was convicted of kidnapping,  
18       sentenced to death and then the sentence was commuted to life  
19       imprisonment.

20           "We were discussing certain characters Jackson had  
21       met in the death house. At the time, we were particularly  
22       interested in a certain case but wanted to lead up to that case  
23       indirectly. Jackson told us about Perkins - or 'Perk' as he  
24       called him - and about Perk's habit of getting his attention  
25       by giving a little tug at his coat.

26           "Because we were actually interested in something

1 else, I tried to detour the subject by asking him more about  
2 Perkins and about Perkins' attitude prior to the execution.  
3 And, as I remember it, although my memory on this point is  
4 vague, I raised the question of why they had made no effort  
5 to save Barbara if she had been a member of their outfit. In  
6 any event, the subject came up. I think I brought it up,  
7 but Jackson may have brought it up himself.

8 "I distinctly remember Jackson's words. He said that  
9 he had asked Perk why, since he was a gone goose, he didn't  
10 'spring the babe.' He described very graphically how Perkins  
11 looked at him with eyes that, according to Jackson, seemed to  
12 go right through you, and said, 'The babe had her chance.'

13 "From the manner in which Jackson said this, I  
14 gathered the impression that he thought Barbara Graham had  
15 failed to co-operate in some way in doing something that was  
16 expected of her and they had either washed their hands of  
17 her or that she had incurred their enmity.

18 "At the time, I can't recall definitely where I got  
19 this impression. I think there was some discussion on the  
20 subject.

21 "I realize that this last episode with Jackson is  
22 of no evidentiary value. I simply include it in this state-  
23 ment because I have mentioned it from time to time to other  
24 people. Jackson is, of course, still available but, even  
25 conceding Perkins made such a remark, I doubt that it would  
26 be at all helpful.

1            "I am, however, very positive in my recollection of  
2 what Warden Teets said. I am very positive that he told me  
3 that all he knew personally about Barbara Graham's guilt  
4 was due to this conversation with Perkins.

5            "At the time of the conversation I was exploring  
6 certain aspects of the death penalty and Warden Teets was  
7 very much interested in getting my opinion on certain matters.  
8 I feel quite certain that he would have made no attempt  
9 whatever to mislead me. On the other hand, I know that his  
10 conversation with Perkins, which he had doubtless summarized  
11 in his report to me, was such that the man had no doubt in  
12 his mind Barbara Graham was along at the time the murder was  
13 committed.

14            "I think this covers the situation just about as  
15 well as I can recall it at the present time. I did, of course,  
16 have many persons talk to me about the Barbara Graham case  
17 before she was executed and I had some personal contact with  
18 an individual who knew something about True. However, I take  
19 it all you are interested in is the conversation with Harley  
20 Teets and I have reported that to the best of my ability.

21            "Sincerely yours, Erle Stanley Gardner."

22            I forget what question I was going to ask you.

23            MR. LEAVY: You were going to ask me if I knew  
24 anything about this story in the Examiner.

25            CHAIRMAN O'CONNELL: Well, I now withdraw the  
26 question.

1                   MR. LEAVY: And the only thing I know about that  
2 was what you just read, or part of what you just read, which  
3 appeared in the Mirror News, I think it was some time  
4 Saturday.

5                   CHAIRMAN O'CONNELL: But certainly, Mr. Gardner's  
6 recollection of his conversation is accurately set forth in  
7 this communication, it would appear that Mr. Weissich and  
8 Mr. Nelson both misconstrued what Warden Teets had to say  
9 to them about the confession emanating from Barbara Graham  
10 herself?

11                  MR. LEAVY: That's your opinion, not mine. I don't  
12 know.

13                  CHAIRMAN O'CONNELL: Well, I am asking you a ques-  
14 tion which is based on a certain assumption and you can  
15 agree with me if you want to take into account the assumption  
16 I think.

17                  MR. LEAVY: It's my opinion, /Chairman, that Harley  
18 Teets, as I knew the man, might tell a fellow like Weissich  
19 and Nelson certain things that he would not tell Erle Stanley  
20 Gardner.

21                  CHAIRMAN O'CONNELL: Well, you are denying the  
22 assumption, then?

23                  MR. LEAVY: Well, I am not going to assume what  
24 went on in Harley Teet's mind since he is not here to defend  
25 himself.

26                  CHAIRMAN O'CONNELL: You don't care to answer my

1 hypothetical question, then?

2 MR. LEAVY: I think you are a little bit too far  
3 out in left field for me, Mr. O'Connell. I don't mean that  
4 disrespectfully.

5 CHAIRMAN O'CONNELL: It was just a hypothetical  
6 question.

7 MR. LEAVY: Very hypothetical, calling upon me to  
8 state what Harley O. Teets was thinking and that he didn't  
9 tell Erle Stanley Gardner the same thing that he told to  
10 Weissich and Louis Nelson.

11 MR. BURTON: It wasn't hypothetical, though, when  
12 you were asked if you made the statement immediately prior  
13 and you wouldn't clarify your position on that?

14 MR. LEAVY: I think I have answered your question,  
15 Mr. Burton.

16 CHAIRMAN O'CONNELL: Is there anything further you  
17 want to add at this time relative to the confession, Mr.  
18 Leavy?

19 MR. LEAVY: Not on this direct question. If you  
20 wish the copies of these letters, I will be happy to give  
21 them to you.

22 CHAIRMAN O'CONNELL: Pass those up, please. Mr.  
23 Allen, do you have a question of Mr. Leavy?

24 MR. ALLEN: I wanted to ask Mr. Leavy some other  
25 question, not directly bearing on this.

26 CHAIRMAN O'CONNELL: He is going to be recalled.

1 Thank you.

2 MR. ALLEN: Mr. Chairman, another question.

3 According to some of the newspapers accounts I read over the  
4 weekend, a Mr. Sullivan has been quoted as having something  
5 to say about the same case, and I wonder if that person has  
6 been called by the Chairman.

7 CHAIRMAN O'CONNELL: I haven't seen anything about  
8 it. I don't know a Mr. Sullivan, so I don't know.

9 MR. ALLEN: A man was quoted by one of the neighbors  
10 as having a lot to say in the Barbara Graham case.

11 CHAIRMAN O'CONNELL: There was a Ward Sullivan  
12 who defended Jack Santo in that trial, is that the Mr. Sul-  
13 livan you are talking about?

14 MR. ALLEN: I don't know, I think that if we don't  
15 call all of those people, somebody is going to be investigating  
16 us next year as to why we didn't call him.

17 CHAIRMAN O'CONNELL: Well, I don't know anything  
18 about Mr. Sullivan having anything to say about us having  
19 this investigation. I think we are ready now for Mr.  
20 Montgomery. Mr. Montgomery, you were sworn last week. I  
21 think we had better swear you in again.

22

23

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## 1                   E D M O N T G O M E R Y.

2                   was called as a witness before the Committee,  
3                   having been duly sworn on oath by the Chair-  
4                   man, testified as follows;

5                   CHAIRMAN O'CONNELL: Mr. Montgomery, last week  
6                   when you testified you were admonished by the Chair to con-  
7                   fine your testimony to the existence of the confession about  
8                   which we have all heard. We asked you not to discuss it in  
9                   any way, the statement made by John True in San Francisco  
10                   on or about June 3, 1953, and at this time we would like to  
11                   inquire as to what you know about that statement, what your  
12                   comparison of that statement is with later statements made  
13                   by John True, indicates is true.

14                   First, let me ask you this, when you became aware  
15                   of the existence of such a statement by John True, that is --  
16                   the one given in San Francisco in 1953?

17                   MR. MONTGOMERY: For the record, so it might be  
18                   straight, I believe, Mr. Chairman, it was June 4th, rather  
19                   than June 3rd. I might say, if I sound a little impassioned  
20                   here once in a while, I hope you will bear with me. It's  
D-2                   not the easiest thing in the world to admit to the public  
21                   that you are wrong and in this case, myself, at the time  
22                   of the Barbara Graham conviction, I felt that she had been  
23                   fairly and squarely convicted, that she was guilty, and I  
24                   subsequently realized, in my own mind, that there was  
25                   gross evidence of a miscarriage of justice and I said so,

1 and it hasn't been the easiest thing in the world -- I  
2 heard rumbles, as we say, of the existence of the statement  
3 of June 4th.

4 Despite a statement by Adolph Alexander, I am happy  
5 to be here today so that you will understand a little bit  
6 about the background of the case. Barbara Graham, Emmett  
7 Perkins, John True, and John Santo, had already been indicted  
8 before this statement was taken from John True in San  
9 Francisco. They were already under indictment on charges of  
10 murder.

11 CHAIRMAN O'CONNELL: Had John True been indicted  
12 also?

13 MR. MONTGOMERY: John True was included in that  
14 indictment, but John True was not then in custody. John  
15 True was picked up by the San Francisco police in Sausalito,  
16 and he had been brought to the Hall of Justice by Frank,  
17 the late Frank Ahern, who was then head of homicide and  
18 later became Chief of Police and Homicide Inspector George  
19 Murray, who is living today and will attest to what I am  
20 saying.

21 And the word got out that John True was in custody  
22 -- actually, when John True was first picked up, he denied  
23 to Mr. Ahern and Mr. Murray that he knew where Burbank was,  
24 that he didn't know who Mabel Monahan was, and he had no  
25 connection whatsoever with the robbery attempt and the murder  
26 of Mabel Monahan.

1           Later that same evening, he was visited by Seth  
2 Terry, who was then the husband of John True's cousin, and  
3 who had had deals, shall I say, with both Santo and True  
4 over a long period of time. They visited for quite some  
5 time alone. What was said and done, I don't know any more  
6 than that Seth Terry returned to the room that he had in  
7 the Fielding Hotel, at O'Farrell and Mason.

8           CHAIRMAN O'CONNELL: Is that a man known as Seth,  
9 S-e-t-h, T-e-r-r-y?

10           MR. MONTGOMERY: Yes.

11           CHAIRMAN O'CONNELL: You understand that Seth  
12 Terry is no longer living?

13           MR. MONTGOMERY: That is correct, and even in Mono  
14 County today, they won't tell you whether it was a murder  
15 or an accidental death. There are some circumstances there  
16 that have never been clarified to the satisfaction of all  
17 concerned.

18           Mr. True, the next morning, on the morning of the  
19 4th, sent word to Frank Ahern, after having talked with Seth  
20 Terry who, incidentally, had been in touch with Patrick  
21 Ceoney, the attorney for Perkins and Santo, had run a few  
22 errands for them, if you please.

23           He advised Frank Ahern that perhaps he had something  
24 to say if some arrangement could be made -- and that was  
25 the expression that he used, arrangement.

26           Now, it may come as a surprise to Mr. Alexander, who

39

1 was there later in the day and the prosecution in general,  
2 that this conversation with Frank Ahern was recorded. It's  
3 a matter of record, this isn't something that I have reached  
4 for out of right field, and it was Frank Ahern, not Covenney  
5 or Lovold, as Cavalier Magazine would have you believe.

6 There is a little item in there about how Lovold  
7 and Covenney went to San Francisco and sweated John True  
8 for two or three days and finally got him to break down. I  
9 tell you, it's hogwash. It was Frank Ahern who called  
10 Ernest Roll, the District Attorney of Los Angeles, and who  
11 made the deal that John True would sing for his supper and  
12 be granted immunity if he turned state's witness and went  
13 down the line.

14 Covenney and Lovold had nothing to do with that,  
15 nor did Adolph Alexander.

16 The deal was made that morning, and John True  
17 answered a number of questions. Ahern, he got him right  
18 then and there, and those of you who may have known Frank  
19 Ahern would know that's how he operated. He wasn't going  
20 to be caught out on a limb and he had John True give him  
21 a rough confession to the Monahan murder.

22 The record will show that it was Adolph Alexander  
23 and Lovold and Covenney, and two of the men are here, who  
24 can't refute it, who caught a noon plane out of Los Angeles.  
25 They were met at the airport at 1:40 in the afternoon in  
26 a police car driven by George Murray, if you please, and he

1 is available. They were driven to the Hall of Justice, and  
2 Covenney, or rather in the presence of Covenney, Lovold,  
3 Alexander and Ahern, as you have already had it in the record,  
4 that's already before you, John True again repeated his  
5 confession in greater detail and it was taken down by a  
6 certified court reporter, Martha Salien, and then unbeknown  
7 to these gentlemen it was also taped.

8 And that session began, I believe, at around 3:00  
9 or 3:47 in the afternoon. We all knew, the press corps knew  
10 that True was in custody and was undergoing a grilling on  
11 the 4th floor in Ahern's office. It was no secret, it was  
12 newspaper copy in Los Angeles and San Francisco.

13 They took a quick dinner break around 5:20, I  
14 think the record will show, and they came back and they  
15 went into conference again, and they broke up at 8:45. And  
16 when that session with John True broke up, there were 4  
17 newspapermen waiting in the hall, and they talked to Adolph  
18 Alexander, and Adolph Alexander made a statement that appeared  
19 not in one newspaper but in all four newspapers in San Fran-  
20 cisco. I have a copy of that, I'd like to read it.

21 I have here both an original and a photostat, if  
22 the Committee would like the photostat, I brought it along  
23 for that purpose, since I have had this made since I was  
24 last in here because I didn't know what was expected of me,  
25 not knowing what I was to testify.

26 "John Lawson True, Sausalito Deep Sea Diver, under

1 indictment with three other persons for the robbery murder  
2 of a Burbank woman, was questioned for six hours here yester-  
3 day by Deputy District Attorney Adolph Alexander of Los  
4 Angeles. As he left City Prison here, Adolph Alexander said,  
5 and I quote and you, as I say, you will find these quotes in  
6 all four papers, "He," referring to True, "He refused to  
7 admit anything. He was asked about the murder of Mabel  
8 Monahan. He said he never heard of her and he doesn't even  
9 know where Burbank is. He was then asked about the Baxter  
10 Shorter kidnap. He said he never heard of Shorter. Most  
11 of the time he repeated over and over again, 'I have told  
12 you already, I never even heard of two of these people who  
13 are indicted with me.' Only one admission Alexander gave.  
14 True says he knows John Santo, underworld figure indicted  
15 with True, Emmett Perkins, and Miss Barbara Graham in the  
16 Monahan murder. True will be returned this morning to Burbank  
17 by Lt. Robert Covenney, and Detective Edward Lovold, Burbank  
18 police officers, on a conspiracy to commit murder warrant.

E-1 19 "Alexander, who was assisting in the questioning,"  
20 and so on the story goes and gives a history of the Monahan  
21 case, and was assisted by Frank Ahern.

22 Now, that, gentlemen, is a statement, the quotes,  
23 if you please, by the Deputy District Attorney, who was in  
24 charge of the prosecution of the Barbara Graham case and  
25 the rest of them for the death of Mabel Monahan. A flat  
26 cut-and-cut denial, and yet John True, as you know now, had

1 just completed a 64 page confession. Granted, it would  
2 then behoove -- there was no obligation on Mr. Alexander's  
3 part to tell us there was a confession, he could have said  
4 no comment. Other District Attorneys do, but he chose to  
5 say there had been no confession. And from that day forward  
6 to the time of the trial, several months later, 10 weeks  
7 later, the press and the defense knew nothing of the statement  
8 that John True had given in San Francisco.

9 During the course of the trial, the transcript will  
10 show, you have it here, that John True even denied having  
11 given a statement originally to Ahern before he talked to  
12 Alexander because then perhaps they might have subpoenaed  
13 Ahern and gotten him down to say what John True had to say.

14 Well, time went by and I heard a rumble or two about  
15 the existence of a statement, Cavalier Magazine and J.  
16 Miller Leavy himself chose to say that I did not cover a  
17 single session of the Nonahan trial. I think the Committee  
18 is already aware of the fact that there is some libel liti-  
19 gation pending in this behalf -- I'd rather not go into that.  
20 I will only say that a man of 20 years experience and with  
21 the reputation that I have, would hardly bring a case to  
22 trial like that if I wasn't in a position to prove that it  
23 was a false statement; but be that as it may, the trial  
24 progressed, I did attend sessions of the Nonahan trial,  
25 contrary to Mr. Leavy and Mr. Walker, and I'd like to  
26 ascertain whether or not Mr. Walker is here. I have been

1 told that he was, and for my own benefit, can I find out.

2 CHAIRMAN O'CONNELL: I don't know.

3 MR. MONTGOMERY: Would you mind asking?

4 CHAIRMAN O'CONNELL: Is Mr. Walker present?

5 If he is present, would he stand? Apparently not. Mr.  
6 Allen.

7 MR. ALLEN: Could I ask a question right here.  
8 It's on what he just said. Before you go on to the next  
9 phase of your testimony, could you tell us just -- were  
10 you at the Monahan trial or were there ever days, what  
11 exactly did you do?

12 MR. MONTGOMERY: Thank you, Mr. Allen. So that the  
13 record might be clear on this point, the San Francisco  
14 Examiner was not particularly interested in the Monahan  
15 murder. We were not at all interested in Barbara Graham at  
16 the time. That was a Los Angeles case. Those of you familiar  
17 with it will recall that after the apprehension of these  
18 people, subsequently, Santo and Perkins were linked to 5  
19 other murders. Crimes, incidentally, in which Barbara Graham  
20 was in no way related, no way connected.

21 MR. BURTON: Excuse me, Mr. Montgomery. I understand  
22 he has answered the question. Bruce, I think you are asking  
23 that he give testimony that isn't necessarily relevant. If  
24 we have specific ties --

25 MR. ALLEN: My question was, did he attend any of  
26 the murder -- any of the Monahan murder trial.

1                   MR. MONTGOMERY: Well, I thought I made myself  
2 clear that I had or I would not be bringing this action.

3                   MR. BURTON: Bruce, I'd like to say this, that he  
4 stated that he did attend at sessions of the trial. I gather,  
5 he said he did not attend every single day and I don't see  
6 that this Committee at this juncture, must elicit from Mr.  
7 Montgomery the presentation of his case if he is going to  
8 have that, that is presently pending.

9                   MR. ALLEN: Well, I haven't got any answer either  
10 way.

11                  CHAIRMAN O'CONNELL: Mr. Montgomery may answer the  
12 question either way he wants to. If he feels that it would  
13 prejudice the civil action which he has pending, then he  
14 probably should not answer the question, but if he chooses  
15 to answer, that's his privilege also.

16                  MR. MONTGOMERY: May I say this, I have been advised  
17 by my own attorney not to get embroiled here in when I was  
18 present and when I wasn't and that sort of thing in the  
19 light of the litigation that is pending, but, Mr. Allen, you  
20 do have my word for it and I am in a position to prove that  
21 I did attend sessions of the Monahan murder trial.

22                  MR. ALLEN: Some of them?

23                  MR. MONTGOMERY: Yes.

24                  MR. ALLEN: But not all of them?

25                  MR. MONTGOMERY: No, I will be honest with you, no,  
26 I did not attend all of the sessions.

1                   MR. ALLEN: I just did not understand what you meant  
2 by that, thank you.

3                   CHAIRMAN O'CONNELL: All right, do you want to get  
4 on with your story.

5                   MR. MONTGOMERY: At the time of the trial and the  
6 conviction, I was satisfied that Barbara Graham was guilty,  
7 there was no doubt in my mind. I had even gone along and at  
8 one time and another had written things about Barbara Graham  
9 which I later found were not true. Statements.

10                  But be that as it may, I eventually began to hear  
11 more and more of this statement by John True in San Fran-  
12 cisco. I went so far as to write a letter to Ernest Roll,  
13 District Attorney of Los Angeles County, requesting a copy  
14 of this statement. I received no acknowledgment.

15                  Along about in late February or early March of  
16 1954, I confronted Ernest Roll and Adolph Alexander at the  
17 State Building in San Francisco at a time when the District  
18 Attorneys and various law officials had convened there at  
19 the call of then Attorney General Pat Brown, and I met, the  
20 first man that I confronted, yes, was Ernest Roll, and I  
21 said that I was still interested in ascertaining whether or  
22 not John True had made an original statement and about the  
23 copy of it.

24                  And his remark to me was, "Oh, you are the fellow  
25 who wrote about this mythical statement I keep hearing about."  
26 And Alexander was then the next out the door and the two of

1 them together, and we talked. We talked about the case gen-  
2 erally and whether or not there was a possibility that Barbara  
3 Graham may have been framed or may have been the victim of  
4 an overzealous prosecution and Mr. Alexander himself assured  
5 me that such was not the case.

6 As I say, the nearest I can place this conversation  
7 with Ernest Roll and Adolph Alexander was in the hallway out-  
8 side the hearing room at about the time the Cahan case came  
9 down, having to do with something about search and seizure.  
10 So I never was able to acquire a copy of this statement or  
11 even definitely ascertain that it existed.

12 And when I first became interested in the possibility  
E-2 that Barbara Graham had been framed or at least was not guilty  
13 of having actually killed Mabel Monahan, was in December of  
14 1953 and I worked from there through until her execution in  
15 June of 1955. It's a matter of record, I am sure, that I  
16 appeared here before Governor Knight and before Joe Babich,  
17 the clemency secretary.

18 I argued for 45 or 50 minutes on behalf of Barbara  
19 Graham. I didn't have the evidence that I have today to  
20 support my contention that Barbara Graham was not the killer  
21 of Mabel Monahan. It was not until after, sometime after  
22 the execution of Barbara Graham, that I became embroiled in  
23 an argument with Frank Ahern over a particular statement that  
24 John True had made and it had to do with whether or not  
25 John True had known Emmett Perkins prior to the Monahan murder,  
26

1 and John True had testified that he had met Emmett Perkins  
2 for the first time about five days before the murder of  
3 Mabel Monahan.

4 And when I said that it was odd to me, when I am  
5 speaking to Ahern, it was odd to me that True would be in-  
6 volved with something like this with a man, or they in turn,  
7 would be involved with a man they did not know, Ahern said,  
8 "Well, hell, he knew Perkins from way back."

9 And I said, "No, he didn't." His testimony was  
10 such-and-such, and we argued a while, and I sent to Los  
11 Angeles at my own expense and had the transcript sent up here  
12 and I opened it up and I showed it to Ahern. John True's  
13 exact testimony from the witness stand and Ahern's remarks  
14 to me were, "The bum, the dirty bum, that isn't what he  
15 told me." And if you know Frank Ahern, or knew him, that's  
16 as far as he would go, he was not a profane man, and when  
17 he called somebody a bum, he really meant it.

18 And with that, Mr. Ahern produced from his file the  
19 copy that I have right here. This statement, 64 page state-  
20 ment from John True.

21 CHAIRMAN O'CONNELL: That isn't the original  
22 document, is it?

23 MR. MONTGOMERY: Well, no, this is a copy of what  
24 he showed me. It's the one that you have in your possession.

25 CHAIRMAN O'CONNELL: You are referring to the  
26 document that Inspector Arnaud was discussing?

1                   MR. MONTGOMERY: The one Arnaud delivered here a  
2 week ago today.

3                   CHAIRMAN O'CONNELL: This document is that which  
4 you were subpoenaed to bring here?

5                   MR. MONTGOMERY: Actually, I had physical possession  
6 of another document and had this copy made, but regardless,  
7 there is nothing that I am going to testify to in connection  
8 with this document that you will not find in your own doc-  
9 ument before you.

10                  CHAIRMAN O'CONNELL: Well, we had subpoenaed that  
11 document. You say this is an exact copy of his document  
12 that you had in your possession at the time the subpoena  
13 was served upon you, is that correct?

14                  MR. MONTGOMERY: I say it is an exact copy for this  
15 reason, that after this was typed up, I used the other, went  
16 over it word for word myself and found there had been no  
17 omissions or additions or errors in the preparation of the  
18 copy that I have.

19                  CHAIRMAN O'CONNELL: Would you mind giving us the  
20 document at this time so that we may compare it with the  
21 document that was produced by Inspector Arnaud?

22                  MR. MONTGOMERY: I would like to get it back, it's  
23 the one, it's the only copy I have.

24                  CHAIRMAN O'CONNELL: It will be returned to you  
25 after we have completed our investigation.

26                  MR. MONTGOMERY: I won't need it for reference,

1 believe me, I studied this document line by line.

2 CHAIRMAN O'CONNELL: If you do want it, you can ask  
3 for it back.

4 MR. MONTGOMERY: I then began a comparison of John  
5 True's original statement to Alexander with reference to his  
6 testimony 10 weeks later. You will find, gentlemen, that  
7 in his original statement, John True was asked how he happened  
8 to go to Los Angeles with Jack Santo and he told of the fact  
9 that Jack Santo had some gold that they were going to dispose  
10 of on the black market.

11 They wanted to take it down and dump it on somebody's  
12 lap and have them look it over and make a deal, and if the  
13 gold deal went through, why, then, there was to be some money  
14 available, and that Santo would then finance John True and  
15 Seth Terry in a logging venture up north.

16 On the witness stand, he was asked, 10 weeks later,  
17 how he happened to go to Los Angeles with Santo, and you  
18 will find this in the transcript, his testimony was to the  
19 effect that he happened to bump into Jack Santo in Auburn  
20 and Santo had to go to Los Angeles on business and he, True,  
21 had decided to go along with him because he wanted to look  
22 for a job, possibly diving for abalone, and, gentlemen,  
23 abalone wasn't in season. He couldn't have gone diving for  
24 abalone if he wanted to.

25 He was asked by Mr. Alexander when -- and I want to  
26 say another thing, too, with regard to this sweating by Lovold

1 and Covenney that Cavalier Magazine referred to. The record  
2 will show by actual count that Lovold asked exactly two  
3 questions. At one point, he says, "Upshaw?" and when  
4 True said, "Yes," Lovold says, "Bill Upshaw?" and True ans-  
5 wered "Yes."

6 That was the extent of Lovold's participation in  
7 the grilling of Mr. True. You will find Covenney in there  
8 10 times, 4 of them are direct statements and 6 of them are  
9 questions. Ahern asked 6 questions. The balance of the  
10 statement is Mr. Alexander, and Alexander alone, and he is  
11 the man who was in charge of the prosecution.

12 After having explained how he happened to go to Los  
13 Angeles with Santo, he was asked, "When did you first meet  
14 Mr. Perkins?" And his statement was that he had met Mr.  
15 Perkins at the home of Jack Santo in Auburn sometime in  
16 January of 1953. He couldn't recall the exact date, but he  
17 saw Santo's car there and he stopped in and Santo in turn  
18 introduced him to Perkins. And at that precise moment, Mr.  
19 Alexander pulled from his briefcase a photograph of Emmett  
20 Perkins. It was a mug shot, a prison mug shot, it bore  
21 numbers on it and he said, "This is the man," and John True  
22 said, "Yes, that is the man. That is Emmett Perkins."

23 And no one could confuse Emmett Perkins, he was  
24 probably the second most homeliest man in the world. His  
25 features were so distinct and different from anyone you ever  
26 saw, that if you saw him once you didn't forget him and Mr.

1 Alexander showed him this picture, and he said, "For the  
2 record, this is picture bearing number so-and-so-and-so,"  
3 he was referring to both the Los Angeles County Jail prison  
4 number and the San Quentin prison numbers, and he said, "This  
5 is a picture of Emmett Perkins."

6 And yet on the witness stand, 10 weeks later, before  
7 the very same man who took the statement, John True testified  
8 that he had never seen Perkins in his life until 5 days  
9 before the Monahan murder.

10 Well, if I may, Mr. Chairman, I'd like to go aside  
11 here for just one moment, backing up the fact that --

12 CHAIRMAN O'CONNELL: Now, Mr. Montgomery, I think  
13 that our reporter has had a good long stretch here. I think  
14 at this time we will take a 5 minute recess, and then pick  
15 up at that point.

16 MR. MONTGOMERY: Thank you.

17 (Whereupon the Chairman recessed briefly at 3:30  
18 p.m.)

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1 CHAIRMAN O'CONNELL: We will be back on the record  
2 now. Do you recall now, Mr. Montgomery, where you left off?

3 MR. MONTGOMERY: Yes, I think I left off with the  
4 statement that the prosecution had permitted John True to  
5 testify that he did not know Emmett Perkins, had never met  
6 Emmett Perkins until 5 or 6 days prior to the murder of Mabel  
7 Monahan, and I asked for the right to digress a minute to  
8 go into my own investigation as to whether or not John True  
9 in fact knew Emmett Perkins.

10 May I say at this point that while my paper was  
11 interested in this case up until the time of the execution,  
12 June, 1955, they felt it was water over the dam, that no  
13 purpose would be served, and I have continued this work on my  
14 own and it has involved traveling many thousands of miles at  
15 considerable expense out of my own pocket and my own time  
16 and at my own expense.

17 You will find, gentlemen, if you care to check into  
18 it, that John True, Jack Santo, and Emmett Perkins, borrowed  
19 a car from Bernardine Pierney of Grass Valley, it's a matter  
20 that came out indirectly and obliquely in the trial in  
21 Nevada City in the Hanson murder case, that they made a trip  
22 to Idaho, Couer d'Alene, on a logging venture or to size up  
23 a potential logging venture, the same one in which Santo was  
24 to invest along with True, their money to be gained from the  
25 Monahan robbery. On their way home --

26 CHAIRMAN O'CONNELL: When was that?

1                   MR. MONTGOMERY: This was, to the best of my know-  
2 ledge, in January of 1953, quite some time, many weeks before  
3 the Monahan murder.

4                   CHAIRMAN O'CONNELL: On that trip to Idaho, Perkins  
5 and Santo and True went along in this borrowed automobile?

6                   MR. MONTGOMERY: That's right, the three men together  
7 in the car of Bernardine Pierney, the same car which, in-  
8 cidentally, later was seized by the Los Angeles police at  
9 the time that Santo, Perkins, and Barbara Graham were appre-  
10 hended.

11                  CHAIRMAN O'CONNELL: You mean that green Oldsmobile?

12                  MR. MONTGOMERY: That's right, the same car. On  
13 their way back from Couer d'Alene, the weather conditions were  
14 such that they couldn't make the explorations they desired  
15 and on the way back they stopped late one night to rob a  
16 safe. The name of the Tavern is the Last Chance place. It's  
17 in Idaho, just over the Washington line between Spokane and  
18 Couer d'Alene. It's a tavern that John True had frequented  
19 on many occasions.

20                  Actually, Santo and Perkins were the safe robbers.  
21 Perkins later admitted it to me on Death Row. They spent  
22 40 minutes peeling this safe with John True acting as the  
23 look-out. There is a bit of humor connected to it, they  
24 didn't know that the safe was open and they needed only to  
25 turn the door, and whether they would have gotten what they  
26 wanted to or not, they left with a hundred dollars and a

1 couple of cheap rings.

2 But more important, and they also stole some license  
3 plates in Washington on their way home, at least one set of  
4 plates the Los Angeles Police Department later acquired when  
5 they found this car.

6 But on their way back, they crossed the river at  
7 Umatilla, Oregon, they registered in this motel in Umatilla  
8 under their correct names, all three of them. They came  
9 back down Highway 395. I later have them registered under  
10 their correct names at a hotel on Bush Street.

11 CHAIRMAN O'CONNELL: San Francisco?

12 MR. MONTGOMERY: Yes, there was a record of Emmett  
13 Perkins and John True engaging in a fist fight over the  
14 attentions of a B-Girl in the Say When bar on Bush Street,  
15 all long before the Monahan murder, and yet we have Mr. True,  
16 the State's principle witness, a man who testified his own  
17 complicity in the crime and walked out without so much as  
18 10 days for manslaughter.

19 We have him saying that he never seen Perkins until  
20 5 days before the Monahan murder. Well, they went on from  
21 there, getting back to the statement now, if I may, and he  
22 told of how they planned the Monahan job and how these 5  
23 men, Baxter Shorter, Willie Upshaw, Perkins, Santo, and  
24 himself, conferred in a motel in El Monte and how various  
25 of them at one time or another and including himself on  
26 occasions, drove to Burbank. They went around the block,

1 they decided what street to come by, where to park. What  
2 street to leave by, they decided whether they were going to  
3 blow the safe with nitroglycerin or burn it with torches, and  
4 they decided it would be torches.

5 Perkins had the tools and he was to do the burning,  
6 and yet on the witness stand, 10 weeks later, John True  
7 testified that he didn't even know there was going to be a  
8 robbery until just before they pulled up at the place and  
9 Perkins put a gun in his hand.

10 Gentlemen, you won't find that in Cavalier Magazine,  
11 but you will find it in this original statement in comparison  
12 with this trial transcript. There were a couple of things  
13 about the prosecution that should have been a warning to us,  
14 one in particular, but be that as it may, that it convinced  
15 me even before her execution that something was amiss.

16 It was hard to conceive that when it came down to a  
17 trial, Barbara Graham had to rely on court appointed counsel,  
18 while the Public Defender with his investigative staff had  
19 been pre-empted by the District Attorney for the benefit of  
20 John True. What use John True had of counsel, I don't know,  
21 he had made his deal, he had his understanding that the  
22 very first motion in this trial was the dismissal of the  
23 indictment against John True. He had no need of counsel,  
24 but Barbara Graham wound up with a court-appointed attorney  
25 who later had an assistant, a total of \$500 for pre-trial  
26 investigation in the six weeks of trial.

1           As she said herself, hardly enough to find out who  
2 is stealing soap at the Y.M.C.A., that might have been a  
3 warning to us, but it wasn't.

4           There was one thing that did stick in my mind. John  
5 True hops all over the place as to just what transpired when  
6 he finally took this gun Perkins gave him and followed  
7 Perkins into the Monahan home. And then he says he waited  
8 until the floodlights came on, the porch lights and all,  
9 and there is another incident where he says he waited until  
10 he saw the crack of light in the door.

11           Before he gave this testimony they had a map on the  
12 wall and where the various cars were parked, and speaking  
13 of cars, I'm not going by notes, I'm pulling this out of my  
14 head, and there is one instance that I want to refer to that  
15 is of extreme importance.

16           At the very outset, they said where did you meet  
17 Shorter, and Upshaw, and Mr. True started to say how he met  
18 them by this motion picture studio over at San Fernando  
19 Valley, and Mr. Alexander cut in and said, it is my under-  
20 standing, John, that you met at a drive-in across near  
21 Warner Brothers Theatre at Laurel Canyon Road and Ventura  
22 Boulevard and you pulled in at this drive-in, one car along-  
23 side the other, and you talked back and forth, and Mr. True  
24 said, no, no, this is the noon meeting, this was the big meet-  
25 ing at noon on the day of the murder on March 9th, Monday  
26 noon. And John True said Barbara Graham was not present.

1 He said they didn't get in the drive-in, they had to go  
2 around and park by a service station, one car behind the  
3 other. And he said Barbara Graham wasn't present at the  
4 time, but 10 weeks later on the witness stand, there is no  
5 mention of having to park one car behind the other some  
6 distance away. They are right back in the drive-in and they  
7 are one car along-side of the other and they are talking  
8 back and forth, Perkins was in the front seat and Barbara  
9 Graham is along-side of him.

10 You say, why did this happen? If you will read the  
11 Grand Jury transcript, you will find that this was the story  
12 that Willie Upshaw gave the Grand Jury and for John  
13 True to have taken the stand and told a different version,  
14 with Upshaw being used as the corroborating witness, their  
15 whole case would have gone out the window, I am sure you  
16 know enough law for that.

17 So, we have John True in one instance saying that  
18 Barbara Graham was not present at a certain meeting on noon  
19 of June the 9th, but in that Grand Jury transcript, that  
20 testimony 10 weeks later, he puts her right there.

21 Getting back to the house at Parkside and Orchard,  
22 and the map on the wall, and True having told them just  
23 where the car he arrived in was parked, and that you will  
24 see it with relation to its proper perspective on the inter-  
25 section in the street, he said he waited until he saw this  
26 crack of light in the door and then went across the lawn and

1 up the steps and over the porch. He came into the foyer  
2 and found Barbara Graham already pistol-whipping Mabel  
3 Monahan.

4 Gentlemen, if you will go to Burbank as I have done  
5 and examine where John True says he stood, you will find  
6 you don't see the front door. You don't even see the front  
7 porch. It's not a matter of 3 feet or 9 feet or 27 feet,  
8 it is a matter of more than 70 feet, and for that car to  
9 have been parked in such a way that John True could see  
10 what he claimed to have seen, it would have had to have been  
11 blocking a private driveway. And to avoid that, and still  
12 be on that side of the street and still be seeing what he  
13 said he saw, that car would have had to protrude out into  
14 the intersection.

15 There are no sidewalks in Burbank in that section  
16 of town and the curbs are rounded at the corners. You  
17 can't tell me that hardened criminals like Santo and Perkins,  
18 Perkins has spent more time in prison than out, are about to  
19 go out on a hundred or a hundred thousand dollar caper and  
20 park their car in such a way as to block a driveway.

21 All right. They asked John True then to relate the  
22 circumstances of what actually occurred and he told how he  
23 interfered with Barbara Graham's whipping of Mabel Monahan,  
24 how he put a stop to it, and how the woman collapsed and  
25 then fell to the floor, and he held her head in his lap.

26 Then he said Emmett Perkins came in right behind him,

1 tore up a sheet into strips and put a pillow case over the  
2 victim's head and neck and tied her hands behind her back.  
3 He said Emmett Perkins put a pillow case over her head.

4 He later changes his story and said that was  
5 Barbara Graham. You will find reference to it in that  
6 transcript that you have.

7 It was something about getting bloody pants, as I  
8 recall it, and one instance he said that when they got back  
9 to the motel after the murder, they told him, get rid of  
10 your clothes, burn them or get rid of them, they are bloody,  
11 you can't go out like that. And he said, that's all I have.  
12 And Barbara Graham and Emmett Perkins are supposed to have  
13 taken his pants somewhere late at night and washed and ironed  
14 them and returned them so that he could leave Burbank before  
15 midnight with Jack Santo.

16 Well, he also was asked, I will soon touch on this,  
17 a minute from now, if I may. John True never left Burbank  
18 with Jack Santo. John True did not return to Grass Valley  
19 with Jack Santo as that transcript will have you to believe  
20 and the police were aware of it and so was the prosecution.

21 CHAIRMAN O'CONNELL: Now do you know that?

22 MR. MONTGOMERY: You will find, if you check the  
23 records thoroughly, that the police have knowledge of the  
24 fact that early on the 10th of March, the day following the  
25 murder, Jack Santo drove John True to the Greyhound Bus Depot  
26 at 6th and Main Streets in Los Angeles, and when they

1 confronted Santo with it, he admitted it, not once but twice.

2 He said that didn't necessarily make him guilty of  
3 murder because he had left John True out at a Greyhound Bus  
4 Depot. Gentlemen, it happens that I traced John True from  
5 the Bus Depot at 6th and Main to the Bus Depot at 7th and  
6 Mission in San Francisco. He took a taxicab, he went directly  
7 to the intersection of Powell and Bush Streets in San Fran-  
8 cisco. He entered an apartment house and he went to apart-  
9 ment 502 and he spent the night there with his ex-wife and  
10 a girl friend.

11 He slept on the couch and he had a wad of bills that  
12 high (indicating), and he peeled off 3 one hundred dollar  
13 bills and gave them to his ex-wife. I have the statement of  
14 these women for that fact, and he didn't go to Grass Valley  
15 until the next day. He spent the night of the 10th of  
16 March at Powell and Bush Streets in San Francisco, and he did  
17 not leave for home until the day of the 11th, but they would  
18 have you believe, and there is testimony in here that he went  
19 north with Santo the same night of the murder.

20 And Alexander had good reason to know it wasn't so,  
21 from something that appears in that transcript, and that is  
22 this. When they asked him about the trip north, you will  
23 find it in there, "Did you have any car trouble north of  
24 Fresno, and in a little town, in the little town of Fresno?",  
25 and as I recall, True answered, "No, we had good tires, we  
26 bought two new tires just before we left, we had no trouble."

1 "Well, didn't you have to go into a garage, didn't you have  
2 trouble with the automatic transmission." John True --  
3 call it a Freudian slip or whatever you want to, said no,  
4 and then he paused a minute or two and then he said, "Oh,  
5 is that the reason he was late getting home." It was perfectly  
6 obvious to anyone who might have been taking the confession  
7 those men were not together. They have a record of the  
8 repair job done at the garage and they know that the man  
9 said there was only one man driving the car when they  
10 came in and got the transmission fixed.

11 One man, John Santo. But that trial transcript  
12 would have you believe that True and Santo left together  
13 that night.

14 They asked John True in their interrogation of him,  
15 which appears in that original statement, they said, "John,  
16 were you in the room when you remember the rug was pulled  
17 up off of the concrete floor, and the couch was pulled away  
18 from the wall," and he says, "Yes, I remember that."  
19 "Do you recall going behind that couch, we have some foot-  
20 prints," and there was a discussion about what type of shoes  
21 he wore and what happened to his shoes and so forth, and he  
22 said, "No." He had no recollection of having gone behind  
23 that couch.

24 And they said, "Well, John, perhaps this will refresh  
25 your memory. Back of that couch in the wall there is a  
26 flap." It was Covenney who asked that question.

1                    "A container for milk, where you put milk bottles  
2 on the outside and you get them from the inside." And  
3 Covenney said, "Don't you recall having gone back there  
4 thinking that was a container for money or a wall safe, or  
5 what have you." And John True said, "No, that doesn't re-  
G-1                    fresh my memory, I have no recollection of that."

7                    And yet in that trial transcript, gentlemen, you  
8 will find John True testifying that, at the order of Santo,  
9 he was down on the floor and he had pulled the grate out of  
10 the floor furnace, and he is down there looking for money.  
11 Well, all of a sudden, he hears Santo or Shorter say, "Here  
12 it is." And he looked up and he says, the two men, Santo  
13 and Shorter, were behind the couch and he went over there,  
14 and they thought they had found a wall safe, but no, it was  
15 just a container for milk bottles.

16                    That is the type of testimony, gentlemen, that  
17 Barbara Graham was convicted on.

18                    We have the instance of Mr. True being asked where  
19 he first met Willie Upshaw, and you will find that in the  
20 trial transcript he says that he met Willie Upshaw for the  
21 first time in his life about 3 days before the Monahan murder.

22                    Gentlemen, I have seen it, it's available. A picture  
23 taken in Reno, Nevada, I believe it was in March of 1947  
24 when John True married his first wife, and there was a  
25 wedding party after the ceremony, at a night club, and a  
26 picture was taken, and here you have John True at the table

1 and his bride, and between them, and a bottle of champagne,  
2 and in between them, leaning over, if you please, between  
3 the two of them, is none other than Willie Upshaw.

4 They were friends from way back. Little wonder that  
5 he was willing to say that Willie Upshaw had backed out  
6 at the murder, at the last minute. That transcript would  
7 have you believe that Willie Upshaw was a successful business  
8 man. Upright citizen.

9 The police know full well that Willie Upshaw and  
10 a man named Davis and Shorter, they have gotten this state-  
11 ment from George Allen. They don't mention his name in  
12 the magazine. They refer to Indian George, but it was George  
13 Allen.

14 But they had planned this murder, this robbery had  
15 been contemplated many, many months before, that they had  
16 cased the job over a period of time, and that Upshaw backed  
17 out principally at the last minute because, as he said in  
18 his own words, according to the trial transcript, and accord-  
19 ing to your statement, that if they find a safe and they blow  
20 it, they will come looking for me and I am a 'dead stinking  
21 fish.'

22 It's common knowledge that Willie Upshaw was more or  
23 less a fringe member of the old Cohen mob, as was Solly Davis.  
24 It's a matter of record in Los Angeles that far from being  
25 the successful business man they portray him to be, that  
26 actually he was 13 months behind in his rent at the time.

1 He was in dire financial straits, so that his wife's piano had  
2 been repossessed. In the Hall of Records you'll find it.  
3 Willie Upshaw was a burglar, there is no question about it,  
4 and the police know it.

5 The very reason that Upshaw gave for backing out  
6 was the fact that the cops were wise to him and that they  
7 would come looking for him. But I'm not so sure that  
8 Willie Upshaw had backed out on this murder, because you  
9 will find in here in the statement when they say that Willie  
10 Upshaw wasn't along on this job, was he? And the truth is,  
11 "Oh, no, he wasn't. If he was --" And he catches himself,  
12 if he was. Why would he say, "if he was"?

13 Well, that's speculation, I am trying to stick to  
14 the record.

15 Gentlemen, there are a good many things, so long as  
16 we are having a field day here, in a sense, it wasn't too  
17 long ago that I had occasion to drive clear to LaVining in  
18 Mono County.

19 CHAIRMAN O'CONNELL: Excuse me, Mr. Montgomery,  
20 Mr. Waldie has a question.

21 MR. WALDIE: I just want to make a point here.  
22 I just want to make sure I understand, and this is directed  
23 to the Chairman and his witness, that, as I understood, the  
24 purpose of the hearing is to determine whether or not there  
25 was evidence suppressed and the evidence that we are talking  
26 about is a statement that Mr. True gave to Chief Ahern

1 and I think it might expedite matters, because certainly the  
2 people that prosecuted the case should possibly have a right,  
3 and I for one have some questions that I want to ask them  
4 about the statement. It might expedite it if you could  
5 confine your testimony to discrepancies in the trial trans-  
6 cript as related to the statement.

7 MR. MONTGOMERY: Well, thank you, Mr. Waldie. There  
8 was one point that I wanted to make here of the possible  
9 suppression of evidence, it involves something that occurred  
10 at the end of the trial, but before the death sentence was  
11 pronounced.

12 MR. WALDIE: Well, does this relate to the statement?

13 MR. MONTGOMERY: It involves a statement, a sworn  
14 statement given by a man in LaVining through a conversation  
15 overheard among the 4 ex-convicts, the statement was repeated  
16 the sworn statement, before the Mono County District Attorney  
17 in Bridgeport.

18 MR. WALDIE: Well, the only thing that I have raised  
19 here, Mr. Chairman, and I'd like for you to note this. It  
20 seems to me we laid down the ground rules here --

21 CHAIRMAN O'CONNELL: I think your point may be well  
22 taken, Mr. Waldie. The notice that was given to Mr. Leavy  
23 and Judge Alexander and Captain Coveney and the others  
24 indicated the precise groundwork or grounds that we were  
25 going to cover and perhaps it isn't fair to go into things  
26 that happened after the trial at this time, and we are

1 a little behind, handicapped by time limitations also.  
2 I understand that the gentleman from Los Angeles had reserva-  
3 tions on the 6:30 plane back to Los Angeles, and we would  
4 like to accommodate them if we possibly can.

5 MR. MONTGOMERY: I can appreciate the Chair's posi-  
6 tion, and also Mr. Waldie's in that regard. There may be  
7 some things I have overlooked along the way, but in essence  
8 I will tell you that there is no question in my mind but what  
9 John True had perjured himself during the course of that  
10 trial and, in many instances, with the knowledge, if you  
11 please, of the prosecution. I think the record in that  
12 respect speaks for itself.

13 CHAIRMAN O'CONNELL: Tell me, Mr. Montgomery, after  
14 you became aware of the existence of this transcript, did you  
15 at any time talk to Mr. Hardy, who represented Mrs. Graham?

16 MR. MONTGOMERY: Talked with whom?

17 CHAIRMAN O'CONNELL: Mr. Hardy.

18 MR. MONTGOMERY: Yes, I had occasion to talk to Mr.  
19 Hardy.

20 CHAIRMAN O'CONNELL: Did you ask him if he, at the  
21 time of the trial, knew of the existence of this earlier  
22 statement by Mr. True?

23 MR. MONTGOMERY: Mr. Hardy had no knowledge of the  
24 existence of this statement, so he said.

25 CHAIRMAN O'CONNELL: That's what he told you?

26 MR. MONTGOMERY: Yes.

1                   CHAIRMAN O'CONNELL: In response to your direct  
2 inquiry?

3                   MR. MONTGOMERY: That's right.

4                   CHAIRMAN O'CONNELL: All right, Mr. Burton.

5                   MR. BURTON: Mr. Montgomery, you testified that  
6 there was a tape recording of the confession or the statement,  
7 rather, made by John True early in the morning prior to the  
8 arrival of the people from Los Angeles and that this state-  
9 ment was recorded?

10                  MR. MONTGOMERY: That's right, and by the very man  
11 who made the recording, I have verified that as to both the  
12 morning statement and the afternoon statements were taped.

13                  MR. BURTON: Are you at liberty to tell this Commit-  
14 tee what people knew of the facts at the time of the inter-  
15 view or the statement, that the matter was being recorded?

16                  MR. MONTGOMERY: I am not sure that they were aware  
17 of that, I do not know.

18                  MR. BURTON: Do you know who was aware of the fact  
19 of the recording being taken?

20                  MR. MONTGOMERY: Sure, Frank Ahern was aware of it  
21 and Inspector George Murray, who made the recording, was  
22 aware of it. Now, whether John True was aware of it or not,  
23 I don't know.

24                  MR. BURTON: Is it common knowledge at the Hall  
25 of Justice that such a recording was made?

26                  MR. MONTGOMERY: I don't know how, I wouldn't say it

1 was common knowledge, no, I think there are others who know  
2 of it.

3 MR. BURTON: How did you learn about the fact of  
4 the recording?

5 MR. MONTGOMERY: I asked about it and was told.

6 MR. BURTON: Who did you ask?

7 MR. MONTGOMERY: Inspector George Murray.

8 MR. BURTON: Did you ask him whether the recording  
9 was still in existence?

10 MR. MONTGOMERY: No, but they have a library, they  
11 have those things, I am satisfied. I only brought it up for  
12 the point that the trial's transcript will show the fact  
13 that John True denied that he ever gave a statement to  
14 Frank Hern.

15 CHAIRMAN O'CONNELL: All right. Any other questions  
16 of Mr. Montgomery? Apparently not. Will you stand by in  
17 case there should be further questions?

18 MR. MONTGOMERY: I shall.

19 CHAIRMAN O'CONNELL: We will call Judge Alexander  
20 at this time.

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Q-2

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ADOLPH ALEXANDER,

2 having been called as a witness before the  
3 Committee, having been duly sworn on oath  
4 by the Chairman, testified as follows:

5 CHAIRMAN O'CONNELL: Will you identify yourself for  
6 the record, please?

7 JUDGE ALEXANDER: Adolph Alexander.

8 CHAIRMAN O'CONNELL: You are presently a Judge of  
9 the Municipal Court of Los Angeles?

10 JUDGE ALEXANDER: No, the Beverly Hills Judicial  
11 District, that's why the letter went astray.

12 CHAIRMAN O'CONNELL: I am sorry. You were the chief  
13 prosecutor --

14 JUDGE ALEXANDER: I was the first investigator, you  
15 might say, I was in charge of that.

16 CHAIRMAN O'CONNELL You were co-prosecutor, at any  
17 rate, with Mr. Leavy in the Perkins-Santo-Graham case?

18 JUDGE ALEXANDER: That is correct.

19 CHAIRMAN O'CONNELL: Judge, you were present in  
20 San Francisco in June 4 of 1953 and present at the Hall of  
21 Justice in San Francisco where the statement of John True  
22 was taken, were you not?

23 JUDGE ALEXANDER: I was.

24 CHAIRMAN O'CONNELL: And that was an interrogation  
25 that started at about 3:47 in the afternoon and went along  
26 until 5:30 or so and was resumed after dinner and completed

1 sometime after 8:00 o'clock that evening?

2 JUDGE ALEXANDER: That's approximately correct, yes,  
3 sir.

4 CHAIRMAN O'CONNELL: And at that time also present  
5 were Inspector Frank Ahern, the late Frank Ahern, Lt.,  
6 now Captain Coveney of the Burbank Police Department, and  
7 Detective Sergeant Lovold of the Los Angeles Police Department?

8 JUDGE ALEXANDER: That's correct.

9 CHAIRMAN O'CONNELL: And you have heard this state-  
10 ment discussed, you have heard the previous witness testify  
11 that after the interrogation was completed, that a statement  
12 was attributed to you in the San Francisco newspapers to the  
13 effect that John True had done a little more than maintain  
14 his innocence, is that correct?

15 JUDGE ALEXANDER: I heard the statement, yes. Frankly,  
16 I do not remember making the statement. I do not deny it,  
17 sir, I may have made a similar statement, bearing in mind that  
18 Baxter Shorter had been killed, kidnapped and killed for  
19 opening his mouth. I may have made that statement, I do not  
20 recall it.

21 CHAIRMAN O'CONNELL: But your recollection is now  
22 is that if you did make that statement you made it because  
23 you felt there was a good and sufficient reason for not  
24 letting the press know what Mr. True had said?

25 JUDGE ALEXANDER: Yes, sir, that is correct.

26 CHAIRMAN O'CONNELL: All right, let me ask you this

1 blunt question. Did you know at the time you took the state-  
2 ment from Mr. True that anything he said in the statement was  
3 not true?

4 JUDGE ALEXANDER: I have no such knowledge, Mr.  
5 O'Connell. We did not have the knowledge then and do not be-  
6 lieve it is untrue.

7 CHAIRMAN O'CONNELL: All right. Let's take the  
8 question of when John True first met Emmett Perkins. Do you  
9 have any reason to suppose that John True knew Emmett Perkins  
10 at a date earlier than 5 days prior to the murder of Mabel  
11 Monahan?

12 JUDGE ALEXANDER: There is a conflict in two state-  
13 ments made by True. I believe one before the Grand Jury and  
14 one at the trial. There is a conflict, and True was cross-  
15 examined on that conflict expressly by defense counsel.

16 Now, Mr. O'Connell, may I say this. According to  
17 my communication here, you wanted to know whether the state-  
18 ment of June 4, 1953, that I took from True, was made avail-  
19 able to the defendants or their attorneys. Now, frankly,  
20 I have tried many murder cases since the Santo case and the  
21 Perkins case. I tried many before that. I have not reviewed  
22 the transcript before coming up here.

23 But I can answer the question put to me in the  
24 letter that you addressed to me.

25 CHAIRMAN O'CONNELL: If you will, please.

26 JUDGE ALEXANDER: Yes. During the course of the

1 trial and at the summation, I particularly was interested in  
2 Mr. Hardy's denial to this witness, Mr. Montgomery, after the  
3 trial, if he ever knew of the existence of the statement.  
4 That is completely false and untrue, and I don't think that  
5 Mr. Hardy lied.

6 In the course of the summation, we had a large chart  
7 prepared, which we had before that jury and on that chart  
8 were the salient features of the Mabel Monahan murder case. I  
9 have here a photograph of that chart. It's headed "Chart to  
10 Illustrate Prosecution Items, Monahan Murder."

11 And on that chart, June 4, True in essence tells  
12 Alexander he will be state witness if court dismissal obtained,  
13 and next to that 3-6-8.

14 I take it that is the page of the transcript on  
15 which that appears on the trial transcript, page 368. I take  
16 it that's what it refers to. We used this chart in argument.  
17 The defense cross-examined Mr. True concerning the statement  
18 that he gave to me on June 4, 1953.

19 You will find that in the transcript, and I believe  
20 if you turn to page 368, while I haven't seen the transcript,  
21 I believe that's what that number refers to.

22 CHAIRMAN O'CONNELL: I am looking at page 368 of  
23 the transcript, Judge, and I will read what I think is  
24 pertinent. "Question by Mr. Hardy. At that time was Mr.  
25 Adolph Alexander present in San Francisco and was an offer  
26 made to you concerning your immunity if you would testify in

1 this case? Answer. It was.

2 "Question. Will you please state that conversation.

3 "Answer. Mr. Alexander told me if I would tell the  
4 truth, the whole truth in regard to this case, he would ask  
5 the Court to dismiss the case against me.

6 "Question. And was that a condition under which you  
7 agreed to testify?

8 "Answer. That is correct.

9 "Question. Did Mr. Alexander also tell you at that  
10 time that you would be indicted?

11 "Answer. I believe he did. I am not sure of that.

12 "Question. And that the case would be dismissed  
13 against you so that you would not be in jeopardy and never  
14 be prosecuted for this offense?

15 "Answer. I believe so, yes.

16 "Question. And you so understood, did you not?

17 "Answer. Yes.

18 "Question. And that is the reason for the testimony  
19 given here, is it not?

20 "Answer. No, sir."

21 JUDGE ALEXANDER: That does refer to the statement  
22 of June 4th that I took from him, does it not, Mr. O'Connell?

23 CHAIRMAN O'CONNELL: Mrs. Thompson has made a  
24 comparison of the statements made in San Francisco and at  
25 the trial, and I think perhaps I will just turn the question-  
26 ing over to her at this point.

1 JUDGE ALEXANDER: May I offer a photographic copy  
2 of that chart in evidence, sir?

3 CHAIRMAN O'CONNELL: Yes.

4 JUDGE ALEXANDER: I direct your attention to June 4.

5 MRS. THOMPSON: Judge Alexander, what I'd like to  
6 ask you is relating to this bit of testimony from San Francis-  
7 co, in which you asked Mr. True, "Did you stop at any garage  
8 any place north of Fresno for any repairs of any kind?"  
9 "Answer: No, we never did. We had bought two new tires  
10 before we went down." "Question. You had no trouble with  
11 that automatic transmission?" "Answer. No." "Mr. Alexander.  
12 All right, go ahead."

13 And, Mr. True: "Is that the reason he was late  
14 getting home?" "Question. No, he -- you talked with your  
15 friend in San Francisco, what happened after that, Sacramento,  
16 excuse me."

17 I'd like to know the person to whom he was referring  
18 to when you answered no.

19 JUDGE ALEXANDER: Yes, it was brought out at the  
20 trial that on the way back north from Los Angeles, he saw  
21 a friend of his. He mentioned his name somewhere in that  
22 transcript. I was particularly concerned at that time with  
23 physical corroboration of anything True was telling me.  
24 That he stopped at a garage, did he get any repair bill, I  
25 was concerned with anything that would corroborate his story.

26 MRS. THOMPSON: I am not sure I understand how that

1 relates here, but I will check it later against the question  
2 and see if I can figure it out.

3 There are two or three other questions here. You  
4 were aware all throughout the trial in Los Angeles that Mr.  
5 True had testified in San Francisco that he was the person,  
6 that Santo was the person, not he, who had initiated the  
7 trip south and that the purpose of the trip was to sell some  
8 gold which I understand was hot gold or something that he  
9 wanted to get rid of on the black market and that True didn't  
10 want to initiate that trip at all, and merely answered the  
11 request that he go along by saying, "I guess so, I am not  
12 doing anything."

13 But throughout the trial, as I recall, in Los Angeles,  
14 the purpose of going south was so that True could go into  
15 some abalone diving business with his nephew?

16 JUDGE ALEXANDER: I don't recall the abalone diving  
17 business, it may be there. I do recall that while in jail,  
18 True got a telegram from this Mr. Cooney, in which Cooney  
19 referred to the abalone business, but I don't recall it at  
20 the trial, and frankly, I haven't read the transcript since  
21 then. I don't know. But I do recall that telegram.

22 MRS. THOMPSON: Let's see, on page 2715 of the  
23 trial transcript at some point in your conversation you  
24 said, "Then we get another flyspeck in the mustard on the  
25 abalone season. The abalone season starts on March 15 and  
26 True came down here about the first week in March, so the

1 season not starting until March 16th, he could not have told  
2 you the truth when he said he came down here to dive with  
3 his nephew. What does the record show, let's see if True  
4 knew that too.

5 "And by the way, Section 792 of the Fish and Game  
6 Code does not prevent surveys being made. It prevents abalone  
7 being taken, but you can make surveys before the actual  
8 season starts. But anyway, you can note for the record and  
9 -- "

10 JUDGE ALEXANDER: Madam.

11 MRS. THOMPSON: "What does he say?"

12 JUDGE ALEXANDER: You are reading from Ward Sullivan's  
13 summation, not mine.

14 MRS. THOMPSON: But what does he say, this is the  
15 cross-examination of Mr. Sullivan which was not read to you.  
16 He asked Mr. True "Are you familiar with the season when  
17 deep sea diving is done. I am.

18 "Question. Was along about March the season for  
19 deep sea diving down here around Catalina?

20 "Answer. You go out and check on your abalone quite  
21 often before the season opens. There is no law against that."

22 Now, that's True's testimony right in the record so  
23 apparently, he, and it doesn't say True, it doesn't say True  
24 says this, so apparently he knew that you were permitted to  
25 make surveys, so that is a means of impeachment and that  
26 shows True was lying because he said "he came up here to fish

1 for abalone with his nephew, am I right, is that a flyspeck  
2 in the mustard, when they are desperate they will hang on to  
3 any straw they can to impeach Mr. True and you know that on  
4 no material point was True impeached. In fact, he was corro-  
5 borated by this evidence.

6 JUDGE ALEXANDER: That sounds, the first part that  
7 you read, sounds to me like Ward Sullivan's closing argument.

8 MRS. THOMPSON: I will check to be sure.

9 JUDGE ALEXANDER: I recall Ward Sullivan referring  
10 to the Fish and Game Code, because I don't think I ever  
11 referred to that code.

12 MRS. THOMPSON: The beginning of this particular  
13 section is page 2709, and it says Mr. Alexander.

14 JUDGE ALEXANDER: Well, there is a mistake there  
15 because that is Ward Sullivan's argument, not mine. He  
16 referred to the Fish and Game Code, not I, I am sure of that.  
17 But I may be mistaken. As I say, this is in 1953, but it  
18 sounds like Ward Sullivan.

19 MRS. THOMPSON: But you didn't know at the time you  
20 were in Los Angeles that the real purpose of Mr. True's going  
21 south was to get rid of hot gold and that he went along at  
22 Mr. Santo's request?

23 JUDGE ALEXANDER: I have heard that story, too.  
24 John True probably told me that, too.

25 CHAIRMAN O'CONNELL: He told you that in San Fran-  
26 cisco on June 4th, didn't he?

1 JUDGE ALEXANDER: Yes, I think he did.

2 CHAIRMAN O'CONNELL: That wasn't mentioned at the  
3 trial?

4 JUDGE ALEXANDER: I don't recall whether it was or  
5 not, sir. I do recall True mentioned something to me about  
6 high-grading, I believe that was the expression that he used,  
7 high-grading gold.

8 CHAIRMAN O'CONNELL: Mr. Waldie.

9 MR. WALDIE: Judge, the only question I'd like to  
10 ask. If True's statement would have been materially helpful  
11 to the defense in impeaching True, was it your opinion as  
12 the District Attorney and prosecuting attorney, that you had  
13 any duty to turn that statement over to the defendant?

14 JUDGE ALEXANDER: Well, at that time we did not have  
15 the rules that we have today. I do believe that if there  
16 was a material discrepancy between True's statement given to  
17 me on June 3rd and the testimony at the trial, I would have  
18 had some duty to disclose that to the defense. If there  
19 was a material discrepancy, yes.

20 MR. WALDIE: Of course, the rules today don't depend  
21 upon any discrepancy. The rules today say, if they know of  
22 the existence, they have the right to get anything you have  
23 from the defendant.

24 JUDGE ALEXANDER: That's right.

25 MR. WALDIE: In those days, I know that rule  
26 wasn't in existence, so the only question I then pose to you,

1 is it the duty of a prosecuting attorney to assist in proving  
2 the innocence of a defendant as well as the guilt?

3 JUDGE ALEXANDER: I feel that if we had such evidence  
4 to prove the innocence of a defendant, it would have been my  
5 duty to disclose that to the defense.

6 MR. WALDIE: And is the impeaching of your chief  
7 prosecuting witness the type of thing that would assist in  
8 proving the innocence of the defendant?

9 JUDGE ALEXANDER: An impeachment on a material  
10 point, yes.

11 MR. WALDIE: And is your position that True's state-  
12 ment would not have permitted the defendant, had he had access  
13 to it, to impeach True on any material point?

14 JUDGE ALEXANDER: When you say access, Mr. Waldie,  
15 nobody ever asked us for that statement.

16 MR. WALDIE: Nor did you volunteer it?

17 JUDGE ALEXANDER: That is correct, sir.

18 MR. WALDIE: So you assume you didn't volunteer it  
19 because it is your statement, because this statement would  
20 not have enabled the defense to impeach True on any material  
21 point?

22 JUDGE ALEXANDER: Yes, sir, that is my position.

23 MR. WALDIE: If it had been, if it had enabled the  
24 defense to impeach True on a material point, you would have  
25 felt duty bound to provide the defense with that statement?

26 JUDGE ALEXANDER: I believe so, yes.

1 CHAIRMAN O'CONNELL: It's your opinion, then, I  
2 take it, there is no variance on a material point between the  
3 testimony given by True at San Francisco and that given by  
4 him at the trial?

5 JUDGE ALEXANDER: That is correct.

6 CHAIRMAN O'CONNELL: And that opinion would be so,  
7 even if it could be demonstrated, in the San Francisco state-  
8 ment of True, True gave an entirely different reason for  
9 going to Los Angeles in the first place, than he gave at the  
10 trial?

11 JUDGE ALEXANDER: Whether that is material or not,  
12 that is a matter of opinion. I don't think it is material  
13 to the issues involved.

14 CHAIRMAN O'CONNELL: And if there was a material,  
15 and if there was a variance between the testimony that True  
16 gave in San Francisco and later in Los Angeles on the question  
17 of when he first met Emmett Perkins, you wouldn't consider  
18 that to be a material bearing?

19 JUDGE ALEXANDER: He was cross-examined on that  
H-2 discrepancy, sir. I had nothing to do with that. He was  
20 cross-examined, I believe. His statement before the Grand  
21 Jury was in conflict with the statement that he gave at the  
22 trial. There was a variance there. He was cross-examined  
23 on that variance, it was not necessary for me to disclose  
24 anything there. The defense had that.

25 CHAIRMAN O'CONNELL: Was the defense able to prove

1 that he met Graham or Perkins at a different time than a few  
2 days prior to the robbery murder?

3 JUDGE ALEXANDER: I don't know what they were able  
4 to prove. I do know that he was cross-examined concerning  
5 that variance.

6 CHAIRMAN O'CONNELL: Do you think that the cross-  
7 examiner would have been aided by having in his possession  
8 the earlier statement?

9 JUDGE ALEXANDER: It probably would have given him  
10 additional questions to ask, yes.

11 CHAIRMAN O'CONNELL: Excuse me, Mr. Francis, I will  
12 let you ask a question in a moment. If there were a variance  
13 in the testimony given at San Francisco and that given at  
14 Los Angeles as to how True and Santo returned to Grass Valley,  
15 would you consider that to be of material bearing?

16 JUDGE ALEXANDER: I think that would be quite  
17 important, yes.

18 CHAIRMAN O'CONNELL: Was there a cross-examination  
19 on that point at the trial?

20 JUDGE ALEXANDER: Mr. O'Connell, I would have to say  
21 at this point that he was thoroughly cross-examined and he  
22 must have been cross-examined on that point, but as I say, I  
23 have not reviewed that transcript since then, but off-hand,  
24 I would say he was cross-examined on that point.

25 CHAIRMAN O'CONNELL: I take it your answer to my  
26 earlier question, that is, whether the cross-examiner would

1 have been aided by having had the transcript of the earlier  
2 testimony in his possession, would be the same as to that  
3 point?

4 JUDGE ALEXANDER: Yes, that would be the same.

5 CHAIRMAN O'CONNELL: And on the question of whether  
6 there was a variance in the testimony as to when John True  
7 first met Graham, would your answer be the same?

8 JUDGE ALEXANDER: That would have been material, yes.

9 CHAIRMAN O'CONNELL: And, I take it your answer  
10 would have been the same with regard to the question as to  
11 whether the cross-examiner would have had in his possession  
12 the transcript, he would have been in a better position to  
13 cross-examine?

14 JUDGE ALEXANDER: Yes, the more material available  
15 to the cross-examiner, the better position he is in to examine,  
16 to cross-examine, you are right.

17 CHAIRMAN O'CONNELL: But on the question of who  
18 put the pillowcase over the victim, if there was any variance  
19 on that point, that would have been a material thing, would  
20 it not?

21 JUDGE ALEXANDER: Yes, if there was a variance there,  
22 but, Mr. O'Connell, might I say I have taken statements of  
23 thousands of persons, witnesses, and defendants, and you will  
24 find you will take a statement from one on one day and they  
25 will give you facts, A, B, C, D, and talk to them at a future  
26 date, go over the same thing, and you will find variances

1 and not deliberately dishonest variances.

2 CHAIRMAN O'CONNELL: Do you think that True made  
3 a mistake as to when he met Perkins under the circumstances?

4 JUDGE ALEXANDER: If you ask me could he, why, sure,  
5 he could.

6 CHAIRMAN O'CONNELL: Do you think he was mistaken  
7 as to why he went to Los Angeles in the first place?

8 JUDGE ALEXANDER: I don't know, sir. All I can do  
9 is ask a man and take his statement.

10 CHAIRMAN O'CONNELL: And make his statement to the  
11 defense available, if your opinion is that there were certain  
12 variances that were questionable?

13 JUDGE ALEXANDER: I think if the prosecution has any  
14 evidence tending to prove the innocence of a defendant, the  
15 prosecution is bound to deliver that evidence, that is my  
16 opinion.

17 CHAIRMAN O'CONNELL: It was your opinion at that  
18 time --

19 JUDGE ALEXANDER: It was my opinion then and it still  
20 is.

21 CHAIRMAN O'CONNELL: In other words, the Court-made  
22 rule on disclosure since 1953 hasn't affected your opinion of  
23 that?

24 JUDGE ALEXANDER: No, sir, not when it comes to the  
25 matter of the prosecution having evidence of the innocence  
26 of the person being accused.

1 CHAIRMAN O'CONNELL: Well, suppose you were convinced  
2 of the guilt of a person, but there were variances, discrep-  
3 ancies in the story of your principal witness that you knew  
4 cast some doubt as to whether or not you would get a convic-  
5 tion. Then how would you feel about it?

6 JUDGE ALEXANDER: I don't know what you mean, cast  
7 some doubt as to whether or not I can get a conviction.  
8 Regardless of whether or not I can get a conviction, if that  
9 evidence points to the innocence of an accused, it's my duty  
10 to disclose it regardless of whether I think I can get a  
11 conviction or not. That is not the point. The point is,  
12 do I have that evidence that tends to exculpate that defendant.

13 CHAIRMAN O'CONNELL: Even though you are morally  
14 certain of the guilt of the defendant?

15 JUDGE ALEXANDER: Well, if I weren't morally certain,  
16 I wouldn't prosecute.

17 CHAIRMAN O'CONNELL: Well, assume that you are  
18 morally certain of the guilt of the defendant, and you have  
19 evidence in your possession which tends to exculpate the  
20 defendant, though not sufficiently to shake your moral convic-  
21 tion of guilt, what would you do with such evidence?

22 JUDGE ALEXANDER: It is not up to me to determine  
23 that point. The point is, if I have any evidence tending to  
24 exculpate a defendant, I am duty bound to disclose it to  
25 the defense.

26 CHAIRMAN O'CONNELL: Do you think that your statement

1 ascribed to you by the San Francisco press after the inter-  
2 rogation of John True in San Francisco tended to make the  
3 attorney or attorneys for the defendant believe that no  
4 statement was given in San Francisco at that time?

5 JUDGE ALEXANDER: Not at all. The attorneys for the  
6 defendants were aware of the statement that I took from Mr.  
7 True. You can find it right there in the photograph of the  
8 exhibits before the jury.

9 CHAIRMAN O'CONNELL: I have the chart and it indicates  
10 this entry, June 4th. True in San Francisco, tells Alex  
11 he will be state's witness if Court dismissal obtained.  
12 This is in relation to page 368 of the transcript, which is  
13 not exactly to say that the full statement had been given at  
14 that time?

15 JUDGE ALEXANDER: Mr. O'Connell, do you think the  
16 defense believed that my entire conversation with True was  
17 just that, well, we will get a dismissal for you?

18 CHAIRMAN O'CONNELL: I wouldn't have believed it.

19 JUDGE ALEXANDER: Neither did the defense counsel,  
20 Mr. O'Connell. They were never misled on that at all.

21 CHAIRMAN O'CONNELL: Mr. Francis, do you have a  
22 question?

23 MR. FRANCIS: Yes. Judge Alexander, I believe there  
24 has probably been some confusion or misunderstanding created  
25 as to the law. Probably unintentional, but could you give  
26 us a statement of the law as it was in 1953 as to the

1 disclosure of evidence in a criminal case?

2 JUDGE ALEXANDER: In 1953, we had no rules of  
3 disclosure. At that time, the prosecution had taken  
4 statements from witnesses or defendants, the Court could not  
5 or did not or could not compel the prosecution to reveal those  
6 statements unless the defendant made copies of them.

7 Since 1953, we have had a development of the law and  
8 today the defense is entitled to the statement taken from  
9 witnesses, their names and their addresses and the contents.  
10 Today they are entitled to that.

11 In 1953, the law did not provide same.

12 MR. FRANCIS: Is there a requirement that demand  
13 be made by defense counsel?

14 JUDGE ALEXANDER: Oh, yes, demand must be made,  
15 that is correct, Mr. Francis, a demand must be made.

16 MR. FRANCIS: Do you feel confident in your own mind  
17 that defense counsel was certainly aware of this statement  
18 being made in San Francisco?

19 JUDGE ALEXANDER: I don't question that for a  
20 moment, Mr. Francis, they knew of that statement. They cross-  
21 examined concerning that statement.

22 CHAIRMAN O'CONNELL: Mr. Burton.

23 MR. BURTON: Defense counsel didn't make a demand  
24 for the statement?

25 JUDGE ALEXANDER: They never did, no. And I believe,  
26 had they made a demand at that time, it probably would have

1      been refused, being very frank with you, because the law  
2      at that time did not provide that we had to give them a copy  
3      of it.

4            MR BURTON: Do you think that it would be in order  
5      to insure the best administration of justice in this state,  
6      that this Legislature codify the Rules of Discovery in this  
7      regard?

8            JUDGE ALEXANDER: Well, I think the Rules of Dis-  
9      covery right now are fairly liberal. I don't think any  
10     codification is necessary. However, if you gentlemen feel  
11     you might codify the law, it's all right with me. I have no  
12     objection.

13           MR. BURTON: Do you think it would be harmful to  
14     the administration of justice if we would codify these rules?

15           JUDGE ALEXANDER: I don't think so, I don't think it  
16     would be harmful to the administration of justice at all.

17           MR. BURTON: Do you think that failure to -- that  
18     the prosecution should provide statements such as True's,  
19     assuming that the present Rules of Discovery would be codified,  
20     should be made reversible error in the event there has been a  
21     conviction when the prosecution has not applied these rules?

22           JUDGE ALEXANDER: Well, I think if the prosecution  
23     is ordered to comply, you don't have to wait for reversal of  
24     error on appeal, I think you have a contempt proceedings. If  
25     they called for the delivery of a statement, if the prosecution  
26     failed to do so.

1                   MR. BURTON: But what if the prosecution fails to do  
2 so, or denies the existence of the material, what proper  
3 method of redress, would it be reversible error?

4                   JUDGE ALEXANDER: You mean if the prosecution has a  
5 statement from a witness, and the Court asks the prosecution,  
6 do you have such a statement, and the prosecution denies it?

7                   MR. BURTON: Yes.

8                   JUDGE ALEXANDER: You want to know if that's error?

9                   MR. BURTON: Yes.

10                  JUDGE ALEXANDER: Well, I think it goes a little  
11 further than error, I think it's contempt of court and may  
12 border on perjury, I don't know.

13                  MR. BURTON: But so far as the defendant is concerned,  
14 if after the trial it is discovered that the prosecution has  
15 failed to produce such statements, do you think it should be  
16 reversible error?

17                  JUDGE ALEXANDER: If the statement had any bearing  
18 on the case, yes. Of course, it should be at least --  
19 at least, it should be reversible error and should go further  
20 than that if the prosecution has deliberately misled the  
21 Court.

22                  CHAIRMAN O'CONNELL: Mr. Waldie.

23                  MR. WALDIE: If the defense had had this statement  
24 you took in San Francisco, do you think it would have assisted  
25 in the defense of Barbara Graham?

26                  JUDGE ALEXANDER: Well, that's a matter of conjecture,

1 Mr. Waldie. I do not know if it would have helped or not.  
2 It could have prolonged cross-examination of John True.

3 MR. WALDIE: Do you think it would have assisted  
4 the defense in impeaching John True in this instance, if they  
5 would have had the material?

6 JUDGE ALEXANDER: Yes, they could have asked him,  
7 is it not true that at such-and-such a date you told so-and-so  
8 in San Francisco the following? Yes, you are right.

9 MR. WALDIE: Then do I understand that you conclude  
10 that you think the possession of this statement would have  
11 assisted the defense in defending Barbara Graham?

12 JUDGE ALEXANDER: I said it would have prolonged the  
13 cross-examination, but whether it would have been of any  
14 assistance, I don't know, sir.

15 MR. WALDIE: I gather you don't feel it would have,  
16 if it would not have assisted the defense of Barbara Graham,  
17 you would have had no objection to producing it if demand  
18 had been made upon you?

19 JUDGE ALEXANDER: I don't follow that question, I  
20 am sorry, Mr. Waldie.

21 MR. WALDIE: I'm sorry for making it so involved,  
22 Judge. I understood you to say that had demand been made  
23 upon you in those days for the production of this statement  
24 by the defense, that in all probability you would not have  
25 delivered it?

26 JUDGE ALEXANDER: That is correct.

1                   MR. WALDIE: And I gather from that statement that  
2 the reason you would not have delivered it was because it  
3 would have assisted the defense in defending Barbara Graham?

4                   JUDGE ALEXANDER: No, I would not have delivered it  
5 because they were not entitled to it, any more than I was  
6 entitled to see what the defense had in his file.

7                   MR. WALDIE: Isn't there a distinction, didn't you  
8 tell us that even though there was no legal duty, you had  
9 a duty, you felt that the prosecutor -- to permit, to give  
10 to the defense any materials which would assist in proving  
11 the innocence of the defendant?

12                  JUDGE ALEXANDER: I told you, Mr. Waldie, that  
13 if the prosecution has any evidence which would tend to  
14 exculpate the defendant, that prosecutor is morally bound to  
15 deliver that evidence to the defense.

16                  MR. WALDIE: Even though not legally bound to?

17                  JUDGE ALEXANDER: That's correct, yes.

18                  MR. WALDIE: So that at this time, then, your  
19 position is that John True's statement, even though it would  
20 have assisted in impeaching your primary witness, it was not  
21 material in aiding in exculpating Barbara Graham from the  
22 crime to which she was accused?

23                  JUDGE ALEXANDER: I don't think the variances in  
24 John True's testimony were material, no.

25                  MR. WALDIE: Thank you, sir.

26                  CHAIRMAN O'CONNELL: Judge, at the time that or

1 during the course of this trial, did you know of the back-  
2 ground, the record of John Santo?

3 JUDGE ALEXANDER: The background of his record?  
4 I think he had one felony conviction prior to the hour of  
5 trial down there. I believe he had one felony conviction.  
6 Now, I am not sure of that.

7 CHAIRMAN O'CONNELL: How about Perkins?

8 JUDGE ALEXANDER: Perkins I know had beaten one  
9 murder case, and his record and convictions I cannot give you  
10 now.

11 CHAIRMAN O'CONNELL: How about Barbara Graham?

12 JUDGE ALEXANDER: Barbara Graham had one perjury  
13 conviction that I know of which occurred here in San Fran-  
14 cisco. She also had some misdemeanors, but I think the only  
15 felony conviction was the perjury conviction here in San  
16 Francisco.

17 CHAIRMAN O'CONNELL: How about Upshaw?

18 JUDGE ALEXANDER: Bill Upshaw, as I recall, did not  
19 have a felony record. Now, I am not sure of that, Mr.  
20 O'Connell, I recall no cross-examination of Upshaw pertaining  
21 to his previous record.

22 CHAIRMAN O'CONNELL: How about John True?

23 JUDGE ALEXANDER: So far as I know, John True had  
I-2 24 never been convicted of any crime, that's my memory at this  
25 time.

26 CHAIRMAN O'CONNELL: What does D.C. mean?

1 JUDGE ALEXANDER: D.C.?

2 CHAIRMAN O'CONNELL: Yes. Disorderly conduct?

3 JUDGE ALEXANDER: It could mean that.

4 CHAIRMAN O'CONNELL: John True was apparently  
5 arrested in Las Vegas in 1951 and charged with disorderly  
6 conduct. The disposition was S.R.A., what does that mean?

7 JUDGE ALEXANDER: I don't know what they do in Las  
8 Vegas, sir, I do not know.

9 CHAIRMAN O'CONNELL: But as far as you can recall  
10 now, at the time of the trial, you believed that John True  
11 was a man who had no prior association with any criminal  
12 activity pertinent to Santo or to anybody else?

13 JUDGE ALEXANDER: Yes, that was my belief and it's  
14 my belief now, sir.

15 CHAIRMAN O'CONNELL: You don't believe that the  
16 information that Mr. Montgomery has on this Idaho activity,  
17 well, along with Perkins and Santo is correct?

18 JUDGE ALEXANDER: Frankly, sir, I saw the picture  
19 and if his testimony is in line with the picture, I wouldn't  
20 believe a word he said.

21 CHAIRMAN O'CONNELL: What picture?

22 JUDGE ALEXANDER: That business of "I want to live."

23 CHAIRMAN O'CONNELL: Well, all right. I guess the  
24 answer is yes -- or no, you don't believe Mr. Montgomery?

25 JUDGE ALEXANDER: No, if his testimony is in line  
26 with the picture which he wrote or collaborated in, I wouldn't

1 believe a word he said, whether it was under oath or not.

2 CHAIRMAN O'CONNELL: If True had, under oath, at  
3 the trial, testified as to a matter or fact which you knew  
4 to be untrue, what do you consider your duty would have been  
5 about straightening the record out then?

6 JUDGE ALEXANDER: That's a rather difficult question,  
7 Mr. O'Connell. When you are prosecuting a case and a witness  
8 gives you an answer which you know to be untrue, the question  
9 is do you just slide by it or do you try to correct the  
10 witness, or do you want to know now what my duty is?

11 CHAIRMAN O'CONNELL: Yes.

12 JUDGE ALEXANDER: That's a difficult question, Mr.  
13 O'Connell.

14 CHAIRMAN O'CONNELL: Have in mind that he is your  
15 witness.

16 JUDGE ALEXANDER: Yes. As my witness, I think it  
17 would be a matter -- well, I shouldn't say it would be a  
18 matter of degree. I imagine the man is testifying falsely  
19 and it's known to me he is testifying falsely, I would try to  
20 refresh his memory right there on the stand or, if necessary,  
21 impeach him or tell counsel, I would do something. I don't  
22 think I would hold still for a witness to testify falsely and  
23 I know he is testifying falsely. I don't know what I would  
24 do, but I know I would not hold still for it.

25 And what you would do depends upon the circumstances,  
26 you know, during the heat of trial, you could sit back and

1 rock the chair and reflect as to what you could have done  
2 under the circumstances, what you should have done six years  
3 ago, but during the course of the trial it's another matter.  
4 But something would have been done. I don't know what would  
5 have been done.

6 CHAIRMAN O'CONNELL: Well, supposing you don't know  
7 one way or the other about the truth of the matter, but you  
8 know it to be inconsistent with an earlier statement made to  
9 you earlier by your witness.

10 JUDGE ALEXANDER: Well, we are going back again, is  
11 it a material variance, is it a material thing. If it is  
12 something material, as I say, the prosecutor could be held  
13 responsible. The prosecutor is duty bound to disclose  
14 it.

15 CHAIRMAN O'CONNELL: In other words, the question is  
16 whether it's of material variance, you consider it to be the  
17 prosecutor's decision to make and not the Court or anybody  
18 else?

19 JUDGE ALEXANDER: Well, who else can decide that?

20 CHAIRMAN O'CONNELL: Well, I guess the Court could.

21 JUDGE ALEXANDER: You mean at the moment when it  
22 occurs?

23 CHAIRMAN O'CONNELL: Yes, you could always go into  
24 chambers or dismiss the jury, whatever seemed appropriate.

25 JUDGE ALEXANDER: And ask the Court whether in the  
26 Court's opinion that is material or not?

1                   CHAIRMAN O'CONNELL: That's right. Are there any  
2 other questions of this witness? Mr. Burton has one more  
3 question.

4                   MR. BURTON: Judge, had you learned of this alleged  
5 confession of Barbara Graham's prior to the reporting of it  
6 here some few weeks ago?

7                   JUDGE ALEXANDER: No, that was the first I learned  
8 of it when I read it in the newspapers.

9                   CHAIRMAN O'CONNELL: Apparently, there are no further  
10 questions. Thank you, Judge. You can make the 6:00 o'clock  
11 plane all right. Thank you very much.

12                  MR. MONTGOMERY: Mr. Chairman, I wonder if I might  
13 be heard for one moment here.

14                  CHAIRMAN O'CONNELL: I think I would prefer to hear  
15 the other witnesses first.

16                  MR. MONTGOMERY: It touches on the circumstances of  
17 a statement Mr. Alexander made here that I would like to have  
18 the record reflect the circumstances.

19                  CHAIRMAN O'CONNELL: Well, we can't get into the  
20 circumstances of allowing the rebuttal and surrebuttal, it  
21 could go on all night. We will hear from you later after we  
22 hear from the Los Angeles witnesses. Mr. Leavy, would you  
23 like to come forward?

24

25

26

1                   J. MILLER LEAVY.

2                   was called as a witness before the Committee,  
3                   having been previously duly sworn on oath  
4                   by the Chairman, testified as follows:

5                   CHAIRMAN O'CONNELL: Mr. Leavy, you were the co-  
6                   prosecutor with Judge Alexander in the Perkins-Santo-Graham  
7                   trial, were you not?

8                   MR. LEAVY: I was.

9                   CHAIRMAN O'CONNELL: And when were you first given  
10                   this assignment?

11                   MR. LEAVY: Officially, August 12, 1953, by the  
12                   late District Attorney, S. Ernest Roll.

13                   CHAIRMAN O'CONNELL: And prior to that date, did you  
14                   have anything to do with the preparation or the investigation  
15                   of the trial of the defendants in the Monahan case?

16                   MR. LEAVY: Only unofficially discussing it with  
17                   Mr. Alexander concerning progress with Baxter Shorter, March  
18                   30th or 31st, he agreed to testify prior to his disappearance.

19                   CHAIRMAN O'CONNELL: Did you interrogate any of the  
20                   witnesses yourself prior to August 12th, 1953?

21                   MR. LEAVY: No, I did not.

22                   CHAIRMAN O'CONNELL: Did you, prior to the trial,  
23                   learn of the existence of the transcript of the statement  
24                   given by John True in San Francisco on June 4th, 1953?

25                   MR. LEAVY: Yes, I believe I was aware of that  
26                   before I was officially assigned, aware of it from Mr.

1 Alexander.

2 CHAIRMAN O'CONNELL: Are you aware of the contents  
3 of that statement?

4 MR. LEAVY: Yes, I read it before the trial along  
5 with other material made available.

6 CHAIRMAN O'CONNELL: Is the original of that docu-  
7 ment in your possession?

8 MR. LEAVY: It is, I have it right here, I have had  
9 a copy made and at such time as you wish to compare them, I  
10 assume the original will be returned to me.

11 CHAIRMAN O'CONNELL: Yes, we will do that. We  
12 have, as you know, a copy, we have a copy, which we were fur-  
13 nished by the San Francisco Police Department, and another  
14 copy furnished by Mr. Montgomery. You don't have any reason  
15 to suppose that these copies that we have are any different  
16 from the original of that statement, do you?

17 MR. LEAVY: The one I have is 64 pages, on the 64th  
18 page is some handwriting, pen and ink copy received 6-9-53,  
19 S. Lovold, No. 2946, copy received 6-12-53. Those dates are  
20 1953. The last one is 6-12-53, Lt. R. H. Covenney, Burbank  
21 P.D. I assume that probably should be the only difference  
22 because this is Martha Salien, reporter. San Francisco,  
23 reporting.

24 CHAIRMAN O'CONNELL: Is that a signed statement?

25 MR. LEAVY: I see no signature except those which  
26 I have referred to.

J-1

1                    Apparently copies, delivered to these different  
2 individuals.

3                    CHAIRMAN O'CONNELL: The statement does not bear the  
4 signature of John True?

5                    MR. LEAVY: It does not, I have never seen it.

6                    CHAIRMAN O'CONNELL: Do you believe that to be the  
7 full statement of John Lawson True, however, taken in San  
8 Francisco on the date indicated?

9                    MR. LEAVY: It's the only one I have ever seen.

10                  CHAIRMAN O'CONNELL: Proceed, then. Did you, either  
11 before the trial or during the trial, have any reason to  
12 suppose that there were material variances between the story  
13 told by John True in San Francisco and that told at the trial?

14                  MR. LEAVY: No, because if you read the June 4th  
15 1953 statement of True, I think he even says there in a  
16 number of times, if and when I get down in the territory  
17 which was strange to him in Los Angeles, these things will  
18 come back to me and I will be able to straighten them out.

19                  I see the usual variances you could get or expect  
20 to exist even with your memory or my memory of telling some-  
21 thing three months later concerning the events over several  
22 days where you are meeting people, perhaps for the first time,  
23 and going from one place to another in a strange town or  
24 strange territory.

25                  I think these same things would happen to me and  
26 I think John True throughout the June 4th, 1953 statement,

1 does make that explanation a number of times.

2 CHAIRMAN O'CONNELL: Mr. Burton.

3 MR. BURTON: You say meeting people perhaps for the  
4 first time.

5 MR. LEAVY: Yes, like Barbara Graham, Perkins,  
6 Baxter Shorter. I think he saw Bill Upshaw once, that is  
7 what I am referring to.

8 CHAIRMAN O'CONNELL: I take it then, Mr. Leavy,  
9 that you are conceding that there are variances in the state-  
10 ment given by Mr. True in San Francisco and that given at  
11 the trial, but that the variances are explained in terms of  
12 the time lapse between the date the events took place and the  
13 time the first statement was given.

14 MR. LEAVY: That's true, and also in the one partic-  
15 ular which Mr. Alexander pointed out. I think True was  
16 brought before the Grand Jury when he was returned to Los  
17 Angeles and testified before the Grand Jury after June 4,  
18 1953. He again, as I recall the trial transcript, when  
19 that was brought to his attention, again before the Grand  
20 Jury, he said that he believed he had met Perkins, I think in  
21 Grass Valley, I am not sure, but at the trial he said he did  
22 not meet him there, he met him in Los Angeles for the first  
23 time, and that was his memory of it, that's all. They did  
24 their best to attempt to impeach him, which is the usual  
25 pattern, an attempt to discredit the witness by a good  
26 defense lawyer.

1                   CHAIRMAN O'CONNELL: As to the reason that True  
2 gave in San Francisco for going to Los Angeles with Santo  
3 in the first place, and that given at the trial, do you think  
4 that True could have been confused in San Francisco or that  
5 his memory might have failed him on that?

6                   MR. LEAVY: That's possible. I think he was doing  
7 the best he could with his memory then, as well as at the  
8 trial.

9                   CHAIRMAN O'CONNELL: Based on your recollection of  
10 what was said in San Francisco and at Los Angeles, was there  
11 a variance in the statement given as to the reason for  
12 making the trip to Los Angeles with Santo in the first place?

13                  MR. LEAVY: As I recall, there was some variance.  
14 He said Santo was coming down on a gold deal and he asked  
15 him to come along with him, and I think True said he was  
16 coming down, he had entered into some sort of transaction  
17 with his nephew on abalone. At the moment, my memory escapes  
18 me as to the June 4th, 1953 statement, although I have read  
19 it in the last few days.

20                  CHAIRMAN O'CONNELL: To refresh your memory, he  
21 states then in San Francisco that Santo had approached him  
22 on a hot gold deal that he had down in Los Angeles, that  
23 some money was going to be raised in that venture which  
24 would finance a joint logging venture that they had planned  
25 up north somewhere. Does that refresh your recollection?

26                  MR. LEAVY: I believe that's the substance.

1 CHAIRMAN O'CONNELL: And does it seem probable to  
2 you that when questioned in San Francisco on June 4th that  
3 he could have forgotten that the real reason for the trip  
4 was this abalone venture of his in Los Angeles.

5 MR. LEAVY: Well, I think that he might have con-  
6 fused them. Because I believe it is certain that he does  
7 concede that Jack Santo is coming down on some kind of a  
8 gold deal and I think it's clear from other evidence in the  
9 case and Bill Upshaw that it was Santo, was coming down to  
10 Los Angeles on a gold deal. It was Bill Upshaw and Baxter  
11 Shorter. In fact, it was Bill Upshaw, as I recall, that  
12 sent Baxter back to Santo because Baxter Shorter's mother had  
13 some 12 or 14,000 dollars she had gotten from the sale of  
14 some property that was <sup>not</sup> then invested and Bill Upshaw put  
15 Baxter Shorter in touch with Santo to see if Shorter would  
16 go for this proposed gold deal.

17 You must remember these gold deals are all illegal.  
18 There is only one legal gold deal -- that's how Shorter got  
19 in touch with Santo.

20 CHAIRMAN O'CONNELL: Do you know whether True had  
21 had any money in his possession at the time that he was try-  
22 ing to take him into custody to stand trial for the murder  
23 of Mabel Monahan?

24 MR. LEAVY: I am not familiar with those details,  
25 Mr. O'Connell.

26 CHAIRMAN O'CONNELL: Do you know whether True was a

1 man who had money or was he like the rest of us, a man who  
2 lived from day to day?

3 MR. LEAVY: Well, I understood, as I understood True,  
4 he was a deep sea diver. Also would engage in diving for  
5 waterlogged logs or those things or some other treasure, and  
6 as near as I could tell from a discussion about him, he was  
7 one of those individuals who might make a lot of money at  
8 one time and not make any for a while. In other words, this  
9 deep sea diving is a perilous and skilled occupation and  
10 I guess you can make a lot of money if you get in the right  
11 venture at that time. What it pays from day to day I don't  
12 know.

13 CHAIRMAN O'CONNELL: Do you know whether he had any  
14 money when he went down to Los Angeles with Santo? Any  
15 substantial amount of money when he went down to Los Angeles  
16 with Santo, for whatever reason it was?

17 MR. LEAVY: I don't recall any testimony or at this  
18 time have any knowledge of him having any great amounts of  
19 money. He was anticipating the abalone season and going into  
20 that venture in Costa Mesa.

21 CHAIRMAN O'CONNELL: Anything inconsistent within  
22 your knowledge about True having a lot of money in his posses-  
23 sion the day after the Mabel Monahan murder?

24 MR. LEAVY: I never heard that he had a lot of money  
25 in his possession after the day Mabel Monahan was murdered.

26 CHAIRMAN O'CONNELL: Well, Mr. Montgomery testified

1 to that a few minutes ago.

2 MR. LEAVY: Well, I probably didn't hear that, but  
3 if that is what he said, it's the first time I ever heard of  
4 it, and I don't know the source of Mr. Montgomery's informa-  
5 tion or evidence.

6 CHAIRMAN O'CONNELL: You were here when Judge  
7 Alexander testified as to what he considered to be his duty  
8 with respect to the disclosure of evidence which attempted  
9 to exculpate an accused person, were you not?

10 MR. LEAVY: Yes, I heard substantially his answer.

11 CHAIRMAN O'CONNELL: Is that substantially the way  
12 you think of it, too?

13 MR. LEAVY: If I understood it correctly, he consid-  
14 ers it to be a duty of a prosecutor whenever there is  
15 exculpatory evidence, to make it available to the other side.  
16 I am more inclined, and always have been, that if a lawyer  
17 asks for that crime report or statement, especially in front  
18 of a jury, if he asks for it, to make it available for him to  
19 see what he can do with it. If he abuses the privilege and  
20 just selects portions out of it, why, of course, you,  
21 gentlemen, as lawyers, know, that we can go to the other  
22 portions which tell the substance of the whole situation,  
23 which is what well could have occurred with this June 4,  
24 1953 statement, if the defense had asked for it and used it.  
25 I think it may well have all been gotten in front of the  
26 jury, and as I told you, True made these explanations therein,

1 he thought these many things would come back to him if and when  
2 he came back down here with the police.

3 So it could well have been a boomerang if the defense  
4 had asked for it. In that regard, while I am on the subject  
5 as to whether the defense asked for that statement, Mr.  
6 Alexander has told you they did not. I heard that there were  
J-2 7 some charges last week of the prosecution suppressing evidence  
8 with regard to that June 4th, 1953 statement.

9 Ward Sullivan, to my knowledge, who was court-  
10 appointed for Santo and Perkins, the only defense lawyer in  
11 the Monahan murder case alive. Jack Hardy and Ben Wolf, who  
12 the Court appointed for Barbara Graham, are both dead.

13 CHAIRMAN O'CONNELL: We seem to have an awful lot  
14 of principals in connection with this trial.

15 MR. LEAVY: Well, that's true. It's been 7 years,  
16 of course, and the good Lord has been sufficiently good  
17 enough to see that I am around and I am happy to be here.

18 CHAIRMAN O'CONNELL: So are we, Mr. Leavy.

19 MR. LEAVY: Thank you. I have here, when I heard  
20 of this information or suggestion that there might be some  
21 question concerning the propriety of the prosecuting office  
22 in the Monahan murder trial, I called Mr. Ward Sullivan  
23 before I came here and told him of the situation and I would  
24 like to submit his affidavit, if I may.

25 He states here, of course, that he was admitted to  
26 practice in 1927, that he was appointed to represent Jack

1 Santo and Emmett Perkins, and that Jack Hardy was appointed  
2 to represent Barbara Graham. That they were jointly tried.  
3

4 He then says, "That during the course of the trial  
5 of said defendants, affiant, as attorney for the said John  
6 A. Santo and Emmett R. Perkins and Jack Hardy and associate,  
7 one Wolf, learned of the fact that the District Attorney of  
8 Los Angeles County had in his possession what purported to  
9 be a statement of one John L. True, an indicted co-conspir-  
10 ator, which statement had been given to a representative of  
11 said District Attorney's office and others by the said John  
12 L. True, on or about June 4, 1953.  
13

14 That neither affiant nor counsel for co-defendant,  
15 Barbara Graham, made any demands, written, oral, or otherwise,  
16 upon the District Attorney of Los Angeles County, or any  
17 member of his office, to be furnished with a copy of said  
18 statement of the said John L. True.  
19

20 That according to affiant's best recollection and  
21 belief, the said John L. True was cross-examined by counsel  
22 for the respective defendants concerning the statement that  
23 he had given on June 4, 1953."

24 I believe the Committee should have this in fairness  
25 to Mr. Sullivan and the deceased lawyers.  
26

27 CHAIRMAN O'CONNELL: All right.  
28

29 MR. LEAVY: And you don't mind if I fill in where  
30 Mr. Alexander has not had the benefit of the trial transcript  
31 which I have in the past few days have been burning my eyes,  
32

1 do you mind?

2 CHAIRMAN O'CONNELL: Not at all.

3 MR. LEAVY: Directing your attention to the chart,  
4 I might say that I prepared this chart and I, of course,  
5 didn't put every repton, as we call it, in parenthesis,  
6 where some material will be available, to support what I  
7 put on this chart.

8 Mr. Alexander has directed your attention to that  
9 June 4th notation which is at page 368.

10 I think if you go to page 366 or 367, you will find  
11 there is no question but that Jack Hardy in his cross-examina-  
12 tion there, was talking about -- 367, I should say. Top  
13 of the page. "When did you first meet Mr. Adolph Alexander?"  
14 This is cross-examination by Jack Hardy of John True. "At  
15 San Francisco.

16 "Question. Do you think that was around the 4th  
17 of June?

18 "Answer. I believe so."

19 And if you want to read the rest of it, he ques-  
20 tioned him as to what he told those people there, and it goes  
21 over on to page 368, where you have read those portions.  
22 I think you gentlemen will agree that that is definitely a  
23 cross-examination of Jack Hardy about the June 4, 1953  
24 statement.

25 CHAIRMAN O'CONNELL: Yes, Mr. Leavy, page 368.

26 Question by Mr. Hardy was, "Did you then and at that time deny

1 all participation in the Monahan murder?

2 "Answer. Did I deny all participation?

3 "Question. Yes.

4 "Answer. At that time, no, I didn't deny it.

5 "Question. What inducement did Mr. Alexander give  
6 you for admitting your participation?

7 "Objection by Mr. Leavy."

8 MR. LEAVY: If I may, tell him to ask him what he  
9 said on line 13.

10 CHAIRMAN O'CONNELL: Page 367, "Question by Mr.  
11 Hardy. Did you deny to him," that is to Mr. Alexander, "that  
12 you had known Barbara Graham?"

13 "Answer. I believe I did.

14 "Question. Did you deny to him that you knew  
15 Emmett Perkins?

16 "Answer. I don't remember whether I did or not at  
17 that time."

18 MR. LEAVY: That's the typical misunderstanding of  
19 a witness that occurs at many trials, he doesn't know which  
20 time he is talking about. I think John True is thinking he is  
21 talking about his April the 16th, or his April the 11th or  
22 April 16th incarceration, and he did deny the offenses at  
23 that time, because if you go over on to the next page --

24 CHAIRMAN O'CONNELL: Well, I don't see -- now, this  
25 doesn't go into the question as to whether the defense had  
26 an opportunity to cross-examine on this statement given in

1 San Francisco, because it's obvious they did have that opportunity.  
2 But it goes to the question, I think, of whether  
3 they went far enough, I suppose.

4 MR. LEAVY: Well, some lawyers think it's well to  
5 not rush in

6 CHAIRMAN O'CONNELL: Well, perhaps, if they had  
7 had the statement, perhaps --

8 MR. LEAVY: It might have boomeranged.

9 CHAIRMAN O'CONNELL: Well, it might have boomeranged,  
10 but then, they might have made a more intelligent choice  
11 as to whether to rush in.

12 Mr. Waldie has a question.

13 MR. LEAVY: May I finish the one other matter before  
14 you ask me another question? I want to direct your attention  
15 to Mr. Alexander's direct examination of John True on page  
16 285. I'm sorry, I have the wrong page, 284. My notes are  
17 even wrong. Top of the page, question. This is by Mr.  
18 Alexander on direct examination. This is of John True.

19 "After you were released and returned to Grass  
20 Valley, were you arrested again?

21 "Answer. I was.

22 "Question. When was that?"

23 CHAIRMAN O'CONNELL: What page is that?

24 MR. LEAVY: Page 284. "Answer. I believe it was  
25 the 2nd of June.

26 "Question. Where were you arrested?

1                   "Answer. Sausalito, California, it's across the bay  
2 from San Francisco.

3                   "Question. And on June the 4th, on the 4th of June,  
4 I had a conversation with you in San Francisco, did I not?

5                   "Answer. That is right.

6                   "Question. Do you remember who was present at that  
7 conversation?

8                   "Answer. I do.

9                   "Question. Will you tell us who was present, please?

10                  "Answer. You, Captain Ahern, San Francisco, Lt.  
11 Covenney of the Burbank Police, and Mr. Lovold.

12                  "Question. Lovold of the Los Angeles Police Depart-  
13 ment?

14                  "Answer. Los Angeles Police, yes.

15                  "Mr. Hardy: May it please the Court, may I at this  
16 time interpose an objection as to the conversation being  
17 testified to. It would be hearsay as to all of the defendants.

18                  "The Court: You dropped your last few words, Mr.  
19 Hardy, and I fail to see that it would be purely hearsay.  
20 I don't think the conversation itself would be admissible  
21 unless something more appeared. I agree with you."

22                  Mr. Alexander on page 285. Before I came to San  
23 Francisco, Lt. Covenney and Lovold were there before me, is  
24 that right?

25                  "Answer. They were."

26                  And it goes on to say he testified before the Grand

1 Jury. I just point that out to show you that Mr. Alexander  
2 brought up the June 4th, 1953 statement of John True and  
3 Mr. Jack Hardy objected to going into it.

K-1 4 Now, to show that we don't suppress evidence in the  
5 District Attorney's office, this case has gotten away from  
6 me and as I was reading it, it came back. At page 1184,  
7 rather than belabor this record with reading all of it, I  
8 will direct your attention to --

9 CHAIRMAN O'CONNELL: I am looking at that page, but  
10 I don't see anything relevant to what we are talking about.

11 MR. LEAVY: Well, I want to point something out to  
12 you to show you that we don't suppress evidence.

13 CHAIRMAN O'CONNELL: Something about notes or memor-  
14 anda of notes?

15 MR. LEAVY: Beginning at the bottom of the page over  
16 to page 1192, you will find there that Mr. Hardy made a  
17 demand for additional letters of Barbara Graham to Donna  
18 Prow. I had been cross-examining Barbara Graham, using her  
19 own letters to establish that this false alibi that was being  
20 concocted with Sam Cerriani was Barbara Graham's own idea.

21 I had been using her own letters to establish that,  
22 and I used 7 or 8 of them, I am not sure. At the pages I  
23 have given you, 1184, line 26, to 1192, line 5, you will find  
24 partly in front of the jury and partly out of the presence of  
25 the jury, Mr. Hardy makes a demand for the remainder of the  
26 letters, and we took the position at that time and the Court

1 ruled with us that they hadn't made sufficient showing.

2 Now, at page 13 --

3 MR. BURTON: Excuse me, Mr. Leavy, just repeat that  
4 last sentence again?

5 MR. LEAVY: As I recall the colloquy of those pages  
6 I am talking to you about, Mr. Hardy made a demand for the  
7 remainder of Barbara Graham's letters of Donna Prow, which  
8 Donna Prow had given to Lt. Covenney, and Lt. Covenney had  
9 testified already that he had given them to Mr. Alexander.

10 Some 15 letters, I may be wrong in the count. Now,  
11 after I had used some 7 or 8, Mr. Hardy made a demand partly  
12 in the presence of the jury and then out of the presence of  
13 the jury, for the remainder of the letters, claiming that  
14 perhaps Barbara Graham in some of these other letters, had  
15 claimed she was innocent and wanted them. We took the posi-  
16 tion then, and the Court ruled with us they hadn't made  
17 sufficient showing. That is, as the law was at that time.

18 Now, at page 1361, you will find, I had apparently  
19 reserved further cross-examination of Barbara Graham. The  
20 defense rested. Barbara Graham was put back on the witness  
21 stand, and from page 1362 to 1363, under Exhibits 80 to 87,  
22 inclusive, the remaining letters of Barbara Graham to Donna  
23 Prow, which were in the possession of the District Attorney  
24 and which were marked for identification, went into evidence  
25 at page 1365.

26 And at page 1363, Mr. Alexander made this statement,

1 line 19. "If the Court please, may the record show, and I  
2 state this in view of the demand made by Mr. Hardy yesterday  
3 in open Court, that these letters, together with those al-  
4 ready in evidence, constitute every letter that I ever re-  
5 ceived from Lt. Covenney, and I have no other letters in my  
6 possession.

7 "THE COURT: The record may so show the statement  
8 of the District Attorney.

9 "MR. LEAVY: From Barbara Graham to Donna Prow.

10 "MR. HARDY: I think it might be further proper  
11 to inquire of the District Attorney if he can state that he  
12 knows Lt. Covenney gave him all of the letters given to him  
13 by Donna.

14 "MR. LEAVY: He testified to that.

15 "MR. ALEXANDER: Covenney testified he gave them  
16 all to me.

17 "THE COURT: Mr. Hardy wants your statement whether  
18 you know anything to the contrary.

19 "MR. ALEXANDER: I know nothing to the contrary."

20 I point that out to you that we did not withhold  
21 any evidence.

22 CHAIRMAN O'CONNELL: Now, you are ready to answer  
23 Mr. Waldie's question, Mr. Leavy?

24 MR. LEAVY: Yes, sir. And I don't think he's  
25 asked it yet.

26 MR. WALDIE: All I wanted to do was to get back to

1 the same question that I asked Mr. Alexander, and I think you  
2 probably answered most of them.

3 Do I then understand Mr. Alexander had said he would  
4 not have produced it had the demand been made, as it would  
5 have prolonged cross-examination and because he felt there  
6 were no material discrepancies from Mr. True's testimony at  
7 the trial and the statement that he gave in San Francisco,  
8 and do I understand you agree, if there had been a material  
9 discrepancy, it would have been your duty to give this  
10 statement to the defense voluntarily, is that correct?

11 MR. LEAVY: Right.

12 MR. WALDIE: And that there was no material discrep-  
13 ancy?

14 MR. LEAVY: Not in my opinion. I will agree that  
15 some lawyers would perhaps take a different view, but not  
16 in my opinion, and I personally feel that it might have  
17 boomeranged because I think the whole statement would have  
18 gotten in and it would have emphasized John True's testimony.

19 MR. WALDIE: Would you then, had a demand been made,  
20 I understood you to say that had a demand been made in Court,  
21 you would have willingly complied in front of the jury by  
22 then having the possibility of getting the whole statement  
23 in and thereby causing it to boomerang.

24 MR. LEAVY: Well, that would not have been my  
25 purpose.

26 MR. WALDIE: I understand that. Would you have been

1 willing to give that statement if demand had been made out of  
2 Court, knowing that all defense counsel wanted to do with it  
3 was to impeach your chief witness?

4 MR. LEAVY: I believe I would have if they had  
5 asked for it.

6 MR. WALDIE: Thank you.

7 MR. LEAVY: Just like when he asked for the remainder  
8 of the letters and then they got them and you will find that  
9 they were unable to make any use of them, if you will read  
10 the remainder of Jack Hardy's examination of Barbara Graham  
11 with respect to those other letters.

12 MR. WALDIE: Well, then, Mr. Chairman, if I may  
13 respectfully submit, these are the issues for which these  
14 hearings were called. I think Mr. Alexander has answered  
15 questions on the issues. I think Mr. Leavy has answered the  
16 questions on the issues. That is, was there a suppression of  
17 this statement, and should there have been a suppression on  
18 this statement. Are there any other issues that we are  
19 hearing?

20 MR. LEAVY: I would like to answer one question Mr.  
21 Burton asked of Mr. Alexander, if I may.

22 CHAIRMAN O'CONNELL: Go ahead.

23 MR. LEAVY: He asked Mr. Alexander if he felt there  
24 should be any legislation by the Assembly to perhaps codify  
25 the decisions of the Court which we have on Discovery, and I  
26 don't know whether you are familiar with perhaps the leading

1 cases on this. That's Funk vs. Superior Court, 52 Cal. 2d,  
2 436. Do you have it?

3 CHAIRMAN O'CONNELL: We have an opinion on that.

4 MR. LEAVY: There is a fairly recent decision in  
5 53 AC, Advance Sheets, 759, Peo. vs. Cooper, which also cites  
6 Cash vs. Superior Court 58, 3AC, 73, I believe.

7 All of these cases pretty well outline the rules and law  
8 pertaining to Discovery now.

9 CHAIRMAN O'CONNELL: The Cooper case holds that a  
10 statement in the possession of the prosecution need not be  
11 furnished the defense unless the person making the statement  
12 is called as a witness?

13 MR. LEAVY: That's in substance what it says,  
14 although I think, under the rules now, they can get to it  
15 beforehand, before trial. I don't see, I don't work quite  
16 that way, having to wait to interpret those rules, having to  
17 wait until the witness takes the stand. If they can make a  
18 showing beforehand, which I think they can, under certain  
19 circumstances, I think they are entitled to it ahead of time.

20 But with regard to any legislation, the cases are  
21 pretty clear except for one thing. The Judges, in interpret-  
22 ing, it even arises in the Carter case, are not all in  
23 agreement that this, under proper circumstances, so long as  
24 it does not violate the privileged communication of attorney  
25 and client, that is, between defense attorney and his client,  
26 the judges are not clear as to whether under proper

1       circumstances this should not be a two-way street.

2           In other words, there are some circumstances where  
3       the prosecution might want to know whether a certain defense  
4       witness has been questioned, and will not talk, perhaps, to  
5       prosecution officials, whether they have a statement. If it  
6       doesn't violate privileged communication, whether that  
7       shouldn't be made available to the prosecution, and I think  
8       it's something for the Legislature to consider, if they should  
9       see fit to codify these Rules of Discovery as the Supreme  
10      Court has been laying them down. If it's with propriety,  
11      consistent with the privileged communication, help to make  
12      it a two-way street, that might be all right.

13       I used it in the trial of the L. Ewing Scott case  
14      and the Judge ruled that a certain party whom the defense  
15      had taken with him to question a witness, that the defense  
16      be required to disclose the name of that party under the  
17      Carter-Riser case. All Judges would not rule that way,  
18      I can assure you.

19       CHAIRMAN O'CONNELL: Mr. Burton.

20       MR. BURTON: Do I take your testimony, then, to be  
21      that you would support the same position that the Judge did  
22      with reference to codifying the rules of procedure as laid  
23      down by the Courts?

24       MR. LEAVY: Yes, if you wished to, I think it's good  
25      law because as the Carter-Riser case has said, what are we  
26      after except to ascertain the truth.

1                   MR. BURTON: Would you say that one means of insuring  
2 and enforcing such codification would be that it would be  
3 reversible error and subsequent, that the trial and conviction  
4 of the defendant, it was found the prosecution is not, has not  
5 complied with his requirement?

6                   MR. LEAVY: Well, I don't think -- of course, I am  
7 not a legislator, I shouldn't tell you what you could legis-  
8 late on. But I don't think you can make that a part of your  
9 Act. I think that's something for the Court to decide, be-  
10 cause what may be error is not always error in the opinion  
11 of the reviewing Court, prejudicial error. You can, of  
12 course, make it compulsory as Mr. Alexander has told you.

13                  It would be contemptuous if the District Attorney,  
14 or even a defense lawyer, in my opinion, was asked to produce  
15 something and said he didn't have it. In my opinion, he  
16 should be disbarred if he did it knowingly.

17                  MR. BURTON: Now, Mr. Leavy, you have also stated  
18 that if the defense asked and used the true statement made  
19 in San Francisco, it could have had adverse repercussions?

20                  MR. LEAVY: It might have.

21                  MR. BURTON: Or it might have, yes. But you didn't  
22 mean to mislead the press or the audience or the record that  
23 if the defense had asked for the statement and decided it  
24 might have an adverse repercussion, they didn't have to use  
25 it?

26                  MR. LEAVY: Well, they wouldn't have to use it, no.

1 Of course, it is not admissible by the prosecution, except  
2 under very unusual circumstances, which I don't think existed  
3 in this case, where you attempt to rehabilitate the witness.

4 MR. BURTON: But you didn't mean to convey the  
5 impression that the defense would have been worse off for  
6 having this statement in their possession, did you?

7 MR. LEAVY: I said they, if they had it in their  
8 possession and they used it, they might have been worse off.

9 MR. BURTON: Well, certainly, they could not have  
10 been worse off under any circumstances if they did not have  
11 the statement --

12 MR. LEAVY: I don't think they could have, except  
13 that they would have asked in front of the jury for the  
14 statement, and the record would show that they got it.  
15 That might psychologically make the jurors wonder, well,  
16 there must have been nothing in there that they could use.

17 MR. BURTON: Now, did Baxter Shorter make a statement  
18 prior to his turning up missing?

19 MR. LEAVY: He didn't turn up missing, he was just  
20 missing.

21 MR. BURTON: Was he found dead?

22 MR. LEAVY: No, nobody has found him.

23 MR. BURTON: Has anybody found his body?

24 MR. LEAVY: No, they never found his body.

25 MR. BURTON: Did he make a statement to the law  
26 enforcement people?

1                   MR. LEAVY: He made a statement, as you will find,  
2 I think, on your chart. I have got it listed as March 31st.  
3 Now, it started on the night of March 30th and went over  
4 into the morning of March 31st.

5                   MR. BURTON: Did the defense demand a copy of that  
6 statement from you?

7                   MR. LEAVY: No, they never did.

8                   MR. BURTON: Is there such a statement?

9                   MR. LEAVY: Oh, yes.

10                  MR. BURTON: That is a written statement?

11                  MR. LEAVY: Do you want a copy of it?

12                  CHAIRMAN O'CONNELL: I'd like one. It will give us  
13 something more to do.

14                  MR. LEAVY: Well, it might give Mr. Montgomery some-  
15 thing more to do. You will find in this statement, you will  
16 find this was a real quick deal, if I may use that expression.  
17 Between Baxter Shorter, Jack Santo, Emmett Perkins, Barbara  
18 Graham, and John True.

19                  You will find that Baxter Shorter didn't even know  
20 these people's last names. Jack, John and Emmett, and he  
21 wasn't even sure of Barbara's first name, he thought it was  
22 Mary. But you can read the whole statement and you can see  
23 this statement of Baxter Shorter -- I have got John True's,  
24 I am sorry, but Baxter Shorter's statement is substantially  
25 the same as the rest of the case as we established it.

26                  And, as John True, eventually put it together later.

1 Of course, there were things that Baxter Shorter knew about  
2 that John True didn't know about.

3 MR. BURTON: I have a question or two, Mr. Leavy,  
4 before you leave the stand. Did you arrive at a financial  
5 arrangement with Mr. Walker on the collaborating of this  
6 book prior or subsequent to the time you heard from Mr.  
7 Weissich that Barbara Graham allegedly had made some statement  
8 concerning her guilt?

9 MR. LEAVY: We have no definite financial arrangement,  
10 don't misunderstand me. It's just that in some way -- we  
11 haven't discussed any terms. But it is agreed that whatever  
12 he writes, if I approve of it, and if my name is used, then  
13 we will come to some financial arrangement. If I don't  
14 approve of what he writes, of course, my name will not be  
15 permitted to be used.

16 MR. BURTON: Did you arrive at this tentative  
17 understanding prior or subsequent to this conversation with  
L-1 18 Mr. Weissich as best you recall?

19 MR. LEAVY: That was before.

20 MR. BURTON: I see.

21 MR. LEAVY: That's my best recollection, but he was  
22 already working on it, as I recall.

23 MR. BURTON: Did you yourself bring to Mr. Walker's  
24 attention the statement that Mr. Weissich --

25 MR. LEAVY: Oh, yes, I think the correspondence  
26 shows that.

1                   MR. BURTON: You yourself brought this to Mr.  
2 Walker's attention?

3                   MR. LEAVY: When I first got it from Mr. Weissich?

4                   MR. BURTON: That was going to be my next question.

5                   MR. LEAVY: Sometime after I got it from Weissich  
6 I brought it to Walker's attention, yes. But of course, we  
7 hadn't gotten it documented yet. I am not about to go out  
8 making statements, somebody else tells me, unless they want  
9 to back them up in writing.

10                  MR. BURTON: Had you told anybody else but Mr.  
11 Walker about this?

12                  MR. LEAVY: Since when?

13                  MR. BURTON: From the time of your learning of it  
14 from Mr. Weissich until the time you told Mr. Walker, was  
15 he the first one?

16                  MR. LEAVY: With the possible exception of my wife  
17 and I can't tell you when I made that known to her, because  
18 I don't always tell her everything.

19                  CHAIRMAN O'CONNELL: Do I understand that the sub-  
20 stance of what you have told us, is that it's your opinion  
21 that even though the defense of Barbara Graham had in its  
22 possession at that trial the earlier statements of John  
23 True, with perhaps the earlier statements or statement of  
24 Baxter Shorter, it would have made no difference in the  
25 outcome of the trial?

26                  MR. LEAVY: That is my definite opinion. May I state

1 for the record I think this is the first time Baxter Shorter's  
2 statement has been made public. It has been made available  
3 to police officers and police agencies, but I don't think it  
4 has ever been as such made available to the public. Of  
5 course, it's been known publicly that Baxter Shorter gave  
6 such a statement, as shown by our trial, but what was in it,  
7 I don't think has ever been made public property.

8 CHAIRMAN O'CONNELL: Do you have any other documents  
9 that you think might be interesting to the Committee?

10 MR. LEAVY: Well, I have a couple of handwriting  
11 cards of Barbara Graham, where she was arrested in 1951 on  
12 a narcotics charge, and on these cards they always ask you  
13 whether you are right-handed or left-handed and also a hand-  
14 writing card when she was arrested in the Mabel Monahan  
15 murder, where she said she was right-handed in there when  
16 asked that question. Of course, that was never an issue at  
17 the trial.

18 CHAIRMAN O'CONNELL: Well, we heard she wrote right-  
19 handed and did other things left-handed.

20 MR. LEAVY: I don't know. John True said the night  
21 she was holding Mabel Monahan by either her hair, I think,  
22 or her neck and shoulders, with her left hand and pistol-  
23 whipping with her right hand.

24 CHAIRMAN O'CONNELL: Did John True ever see the  
25 Shorter statement at any time before the trial?

26 MR. LEAVY: Not to my knowledge. Now, as you know,

1                   Mr. Alexander was in this case much longer before I was.

2                   CHAIRMAN O'CONNELL: All right. Mr. Allen has a  
3                   question.

4                   MR. ALLEN: What was the version of the Monahan  
5                   killing that's in the Shorter statement?

6                   MR. LEAVY: Well, he says he was one of the last to  
7                   go in, the girl went in first and John True followed and he  
8                   described the old lady, Mabel Monahan as badly beaten in the  
9                   hall-way where the pictures, if you want to see those,  
10                   show that she was laying there beaten.

11                   MR. ALLEN: By who?

12                   MR. LEAVY: Of course, he didn't get in until after  
13                   John True got in. John True, of course, when he first comes  
14                   in, he sees Mabel Monahan being beaten by Barbara Graham.  
15                   Shorter doesn't see that because he comes in later.

16                   CHAIRMAN O'CONNELL: Has he been in before or after  
17                   Perkins?

18                   MR. LEAVY: As I recall, afterwards. Now, you will  
19                   find a discrepancy in Shorter's statement as compared to  
20                   True's. I think Shorter has Perkins driving with him from  
21                   the Smokehouse over to the scene of the crime the night of  
22                   the offense, and I am satisfied he was wrong there because  
23                   Perkins was driving the other car, and I think it was Santo  
24                   who got into the car with Shorter and drove over. You will  
25                   find that difference. Who is correct? Perhaps Shorter is  
26                   mistaken at that time, and you will find -- oh, yes, I think

1       Baxter Shorter claims that John True is supposed to have made  
2       some comments about Tooter Shearer bringing in boxfuls of,  
3       two boxfuls of money from Vegas and I am inclined to believe  
4       John True is correct when he, in his June 4th statement, says  
5       that was talk between Baxter Shorter and Santo, or it was  
6       certainly discussed.

7                    MR. ALLEN: Does Shorter say who put the pillowcase  
8       over Mabel Monahan's head?

9                    MR. LEAVY: I don't recall at this moment.

10                  CHAIRMAN O'CONNELL: Well, let's let him have a  
11       copy of it, he can take a look at it.

12                  MR. LEAVY: I doubt if he said that because he came  
13       in the house when Mabel Monahan was already beaten and she  
14       had been tied. She was in the hall-way, that's where Emmett  
15       Perkins dragged her body after the beating in the place close  
16       to the door, but I don't think he would know, I don't think  
17       he was in there.

18                  MR. ALLEN: When Barbara Graham was arrested on the  
19       Mabel Monahan murder charge, prior to that time, did she have  
20       a narcotics habit?

21                  MR. LEAVY: She had what they call a mild heroin  
22       habit. I am told that, and this is, of course, my information  
23       only. I am told that that is one way they traced Jack Santo,  
24       Emmett Perkins and Barbara Graham to the place where Thad  
25       Brown, Chief of Detectives, they traced her to that place,  
26       having followed her previously to a place where she bought

1 some heroin, and then they followed her to this place in the  
2 hide-out where she, Emmett Perkins and Jack Santo had moved  
3 successfully to several places.

4 MR. ALLEN: At the time of this arrest, you men-  
5 tioned the name of Thad Brown, was there a big crowd present  
6 at the time Barbara Graham was picked up or not?

7 MR. LEAVY: Thad Brown told me there was none of this  
8 fanfare that you see in the movie about lights and "come on  
9 out or this or that will happen." Thad Brown went in through  
10 the door, and I think Barbara Graham was starting to disrobe,  
11 and I think Santo and Perkins were in their shorts.

12 CHAIRMAN O'CONNELL: These are collateral matters  
13 now, aren't they? I am thinking that the reporter is about  
14 out of tape.

15 MR. LEAVY: Besides, we have Mr. Coveney, he is  
16 going back to Los Angeles on the plane with us.

17 MR. ALLEN: One other question. At the time of this  
18 same arrest, were any press or reporters present?

19 MR. LEAVY: I am told no. I wasn't there, my informa-  
20 tion is from the detectives and Thad Brown, but that is all  
21 I can tell you.

22 CHAIRMAN O'CONNELL: All right. I don't believe  
23 there are any further questions from you, Mr. Leavy. We  
24 will take a five-minute recess in order to allow the  
25 reporter to re-stock his machine.

26 (Whereupon, the Chairman recessed briefly at 5:30 p.m.)

1                   CHAIRMAN O'CONNELL: All right, let's go back on  
2 the record. All right, we will be at order. We will call  
3 at this time Capt. Robert Coveney. Come forward, please.

4                   ROBERT COVENEY.

5                   was called as a witness before the Committee,  
6 having been duly sworn on oath by the Chair-  
7 man, testified as follows:

8                   CHAIRMAN O'CONNELL: Will you state your full name  
9 and address for the record?

10                  CAPT. COVENEY: Coveney, C-o-v-e-n-e-y, Police  
11 Department, Burbank.

12                  CHAIRMAN O'CONNELL: It's Capt. Coveney now, is  
13 that correct?

14                  CAPT. COVENEY: That's right.

15                  CHAIRMAN O'CONNELL: Whereas you were Lt. Coveney  
16 at the time the murder of Mabel Monahan took place?

17                  CAPT. COVENEY: Yes, that's right.

18                  CHAIRMAN O'CONNELL: And you investigated that  
19 crime, did you not?

20                  CAPT. COVENEY: Yes, I was the principal investigat-  
21 ing officer.

22                  CHAIRMAN O'CONNELL: And you were present in San  
23 Francisco when the testimony of John True was taken on June  
24 4, 1953?

25                  CAPT. COVENEY: Yes, I was.

1                   CHAIRMAN O'CONNELL: Have you heard the questions  
2 put to Judge Alexander and to Mr. Leavy, and the answers that  
3 were made by those persons, is there anything you can add  
4 to what you have already heard?

5                   CAPT. COVENEY: No, there is nothing that can be  
6 added. John True maintained his innocence for a day and a  
7 half. We were up there for that length of time prior to Mr.  
8 Alexander's arrival and the investigation was going on all  
9 day and all night trying to make John True make known to us  
10 what we felt we knew.

11                  And he finally agreed to make certain disclosures  
12 if he could have a guarantee that he wouldn't be convicted  
13 upon his own testimony and he wouldn't accept the word of a  
14 law enforcement officer in that connection, but that he would  
15 from the District Attorney himself personally in Los Angeles  
16 and, of course, it was I who made the phone call to Mr. Roll  
17 to which Mr. True talked to Mr. Roll who was on the extension,  
18 and I gave Mr. Roll briefly a run-down, at which time Mr.  
19 Roll told me how True would make no further statement until  
20 he sent his Chief Deputy, Adolph Alexander, down to explain  
21 to him personally exactly where he would stand in connection  
22 with the prosecution should he make a disclosure that would  
23 clear their case.

24                  So we merely waited for Judge Alexander to arrive.  
25 At this time he did explain the law to Mr. True, and he was  
26 willing to go ahead and make his statement.

1                   CHAIRMAN O'CONNELL: Had John True made a rough  
2 confession prior to the time Mr. Alexander arrived?

3                   CAPT. COVENEY: No, he did not. He merely told us  
4 that he had information that we wanted, but he wouldn't  
5 elaborate. He said, "I won't tell you anything until I have  
6 this assurance how I stand legally." He had no counsel of his  
7 own.

8                   CHAIRMAN O'CONNELL: Do you know anything about an  
9 early statement that was made to Inspector Ahern, do you?

10                  CAPT. COVENEY: I was there continuously and Ahern  
11 at no time talked to John True outside of my presence, and  
12 there was no such disclosure made by True to Ahern to my  
13 knowledge.

14                  CHAIRMAN O'CONNELL: Do you know Inspector George  
15 Murray?

16                  CAPT. COVENEY: Yes.

17                  CHAIRMAN O'CONNELL: Is it possible that a statement  
18 might have been given to Inspector Murray prior to the time  
19 that Mr. Alexander arrived?

20                  CAPT. COVENEY: I don't see how that would be possible.

21                  CHAIRMAN O'CONNELL: John True was arrested in April  
22 in Grass Valley, was he not?

23                  CAPT. COVENEY: That was his first arrest, that's  
24 right.

25                  CHAIRMAN O'CONNELL: That was in connection with the  
26 Monahan murder also?

1 CAPT. COVENNEY: Yes.

2 CHAIRMAN O'CONNELL: Did you make that arrest?

3 CAPT. COVENNEY: No, I was in Reno at that time.

4 At that time, part of this investigation, the physical arrest  
5 was not made by me. It was made by an officer of my detail,  
6 however.

7 CHAIRMAN O'CONNELL: Do you know who those officers  
8 were?

9 CAPT. COVENNEY: Yes, Det. Vandergrift and Lorenger,  
10 both from Burbank.

11 CHAIRMAN O'CONNELL: And was that arrest made on the  
12 11th of April?

13 CAPT. COVENNEY: That's correct.

14 CHAIRMAN O'CONNELL: I am looking at the transcript  
15 of your testimony at the trial. At page 1552, you were re-  
16 called as a witness on behalf of the people and examined by  
17 Mr. Leavy, and Mr. Leavy asks you when in April, 1953, True  
18 was in the Burbank City Jail. Your answer was, he was  
19 arrested on April 11th in Grass Valley, transported to Burbank  
20 and was in custody up to and including the 16th of April.

21 Do you recall that?

22 CAPT. COVENNEY: Oh, yes.

23 CHAIRMAN O'CONNELL: And then the question, "During  
24 those days when was he in the Burbank City Jail? Answer.  
25 From the 13th to the 16th of April."

26 CAPT. COVENNEY: I remember the testimony.

1                   CHAIRMAN O'CONNELL: Now, where -- and did it take  
2 two days to get from Grass Valley to Burbank -- you see what  
3 I am driving at. Where was he between the 11th and 13th of  
4 April?

5                   CAPT. COVENNEY: Overnight in Stockton. He stayed  
6 overnight in Stockton. At the time of this arrest, I was in  
7 Reno, the officer that made the arrest transported True on  
8 down to Los Angeles ahead of me and I arrived later on. It's  
9 my understanding that they stayed overnight in Stockton.  
10 I have the arrest report where True was originally booked  
11 in. I think, however, the date is accurate that you refer to.

12                  CHAIRMAN O'CONNELL: Was True booked at the Stockton  
13 Jail?

14                  CAPT. COVENNEY: Yes, he was booked en route.

15                  CHAIRMAN O'CONNELL: What was the purpose of holding  
16 him in Stockton for a night?

17                  CAPT. COVENNEY: I think they left late in the after-  
18 noon, rather than drive all the way through. There was no  
19 real -- it served no other purpose other than to give them a  
20 break on the route back from San Francisco.

21                  CHAIRMAN O'CONNELL: Can you recall the name under  
22 which True was booked in Stockton?

23                  CAPT. COVENNEY: No, I don't. I think I have a  
24 record of it here. I think that -- I feel confident that  
25 his true name was not used.

26                  CHAIRMAN O'CONNELL: Does the name Henry Murphy --

1 CAPT. COVENNEY: That sounds familiar to me, yes, it  
2 does.

3 CHAIRMAN O'CONNELL: And if I told you that the  
4 record of the Sheriff's Department of San Joaquin County  
5 show that John True or Henry Murphy was released in custody  
6 of the Burbank Police Department on the morning of the 12th,  
7 would that square away with your impression of what happened?

8 CAPT. COVENNEY: No, not being present, I would have  
9 to refer to the record in connection with these dates that  
10 you are referring to. He was booked in at Burbank on the  
11 13th, according to testimony.

12 CHAIRMAN O'CONNELL: Well, you said that he was in  
13 the Burbank City Jail from the 13th to the 16th of April?

14 CAPT. COVENNEY: That's correct, I am looking at the  
15 arrest report and it's dated April 13, 1953, as being re-  
16 ceived at Burbank. I can't explain --

17 CHAIRMAN O'CONNELL: You can't explain why, if  
18 you left on the morning of the 12th, he wasn't booked in  
19 Burbank until the 13th?

20 CAPT. COVENNEY: No, other than the overnight stay  
21 at Stockton. If there is still a time lag in there, I am  
22 unable to explain it. I have no knowledge of why the lag  
23 exists.

24 CHAIRMAN O'CONNELL: Do you mind investigating that  
25 and letting us know by letter if you can find out what hap-  
26 pened?

1 CAPT. COVENNEY: There is a possibility that I have  
2 it here, and when I conclude my testimony, I will return and  
3 go over this and I might be able to show it to you factually.  
4 I have no memory of it right now.

5 CHAIRMAN O'CONNELL: The Stockton records show that  
6 True was released in the custody of an officer by the name  
7 of Brown and Simpson of the Burbank Police Department. Do  
8 you know them?

9 CAPT. COVENNEY: No, this I am hearing for the first  
M-1 10 time. These things are not at all familiar to me.

11 CHAIRMAN O'CONNELL: Why was True held in Stockton  
12 under the name of Henry Murphy?

13 CAPT. COVENNEY: We had a very unfortunate experience  
14 with the press in connection with the revelations made known  
15 to us by Baxter Shorter. At that time, Baxter Shorter's  
16 statement we had, but it hadn't been generally released and  
17 as a result, we were disinclined to let the press know that  
18 we had arrested John True, on the theory it would certainly  
19 hamper our investigation if it were known. That's the reason  
20 he was booked in under a name other than John True at Stockton.

21 Of course, when he was brought in to Burbank, he  
22 was booked properly under his right name.

23 CHAIRMAN O'CONNELL: This was before any statement  
24 had been received from Baxter Shorter?

25 CAPT. COVENNEY: No, we had the statement from  
26 Baxter Shorter at the time of John True's arrest in Grass

1 Valley.

2 CHAIRMAN O'CONNELL: And because of the disappearance  
3 of Baxter Shorter and the refusal of John True to implicate  
4 himself in the crime, it was necessary to release True on  
5 the 15th of April?

6 CAPT. COVENNEY: That's correct.

7 CHAIRMAN O'CONNELL: What was the date of the dis-  
8 appearance of Baxter Shorter, do you remember?

9 CAPT. COVENNEY: The 14th of April. 14th or 15th,  
10 it's one or the other, I am inclined to think it was on the  
11 14th. I have it, however, right here, I will give it to you.  
12 14th of April, 1953, 8:15 p.m.

13 CHAIRMAN O'CONNELL: Well, didn't you say earlier  
14 that the reason for using the assumed name in Stockton was  
15 because of the disappearance of Baxter Shorter?

16 CAPT. COVENNEY: No, that was an incorrect statement.  
17 There was a news leak on the statement. There had been a  
18 little bit in the newspapers for 2 or 3 days prior to his  
19 actual disappearance, to his kidnapping. Well, we were  
20 aware of that, of this news leak, information at the time  
21 we picked up John True, and we were extremely apprehensive  
22 of what was happening down south here in connection with  
23 Baxter Shorter and not to further inflate this thing or to  
24 ignite it, keeping John True in the background seemed to --  
25 would serve our purposes better than make it know to the  
26 press that we had him in custody.

1                   CHAIRMAN O'CONNELL: Do you have any questions, Mr.  
2 Burton?

3                   MR. BURTON: I don't mean to infer anything improper,  
4 but do you have any financial arrangements in the preparation  
5 of this book?

6                   CAPT. COVENNEY: None whatever.

7                   MR. BURTON: I'm not surprised by the answer, but I  
8 wanted to ask it.

9                   CAPT. COVENNEY: I am glad you did ask the question.

10                  CHAIRMAN O'CONNELL: I take it that you are, based  
11 on your knowledge of the incident surrounding the Monahan  
12 murder, that that story, given by True at the trial, was  
13 substantially correct in that the actual murderer of Mrs.  
14 Monahan was Barbara Graham, are you of that opinion now?

15                  CAPT. COVENNEY: I sure am.

16                  CHAIRMAN O'CONNELL: And that the earlier story given  
17 by True in San Francisco was in no material respects inconsis-  
18 tent with the story that he told at the trial?

19                  CAPT. COVENNEY: None whatever.

20                  CHAIRMAN O'CONNELL: Thank you very much, Capt.  
21 Coveney. Mr. Allen.

22                  MR. ALLEN: Were you present when the statement of  
23 Baxter Shorter was taken?

24                  CAPT. COVENNEY: Yes, I was present.

25                  MR. ALLEN: I'd like to read you one sentence out  
26 of this and ask you if you recollect Baxter Shorter saying

1 this. Page 7, near the bottom of the page, "So as I walked  
2 in, I can't help seeing this woman. She is beaten horribly.  
3 There is blood all over the rug and everything and as I  
4 entered the door the woman is moaning. The woman bends down  
5 to John, he is holding her head down on the rug, on the  
6 carpeting. The woman says, 'go on and knock her out,'  
7 and then goes on to say, 'it isn't a chrome-plated gun,'"  
8 that's on the next question.

9 Do you recall that?

10 CAPT. COVENNEY: I recall his statement.

11 MR. ALLEN: To this effect?

12 CAPT. COVENNEY: Yes.

13 MR. BURTON: I assume, Mr. Coveney, he also made the  
14 statement that they pulled up at dinnertime, when it was  
15 apparently, there was still some light because people were  
16 out on the lawn. Do you recall that statement on the same  
17 page?

18 CAPT. COVENNEY: I'd have to refer to it, I am not  
19 too sure about that. If it appears in there, that's an exact  
20 conversation word for word of the conversation taken at the  
21 Miramar Hotel. I wouldn't quarrel with anything you are  
22 reading in there.

23 CHAIRMAN O'CONNELL: Well, Captain, you were in  
24 charge of the investigation of the Monahan murder, as you  
25 have already testified. During the course of that investiga-  
26 tion, did you determine that Mrs. Monahan, prior to her

1 unfortunate demise, had to use a cane, and regularly used a  
2 cane to get about?

3 CAPT. COVENEY: No, we queried her daughter relative  
4 to that, and she was unaware of her mother's use of a cane  
5 at any time. The daughter visited with her a few months  
6 prior to her murder. The use of a cane or any other aid was  
7 not known to her daughter.

8 CHAIRMAN O'CONNELL: And there was no cane found in  
9 the house at the time the first search of the house was made?

10 CAPT. COVENEY: No, we photographed it, we took in  
11 excess of 40 photographs of every room, and I can tell you  
12 there was no cane found anywhere within her presence.

13 CHAIRMAN O'CONNELL: Thank you very much, Capt.  
14 Coveney. Mr. Montgomery, you had one thing that you wanted  
15 to add.

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ED MONTGOMERY,

2 was recalled as a witness by the Committee,  
3 having been previously sworn on oath by  
4 the Chairman, testified as follows:

5 CHAIRMAN O'CONNELL: Proceed, Mr. Montgomery.

6 MR. MONTGOMERY: Mr. Alexander inferred that my  
7 statement concerning my conversation with Roy Hardy, counsel  
8 for Barbara Graham, was, is not truthful. I think the trans-  
9 cript of the trial will bear out exactly what Mr. Hardy told  
10 me, that he had no knowledge of this statement, nor had it  
11 been shown, or had he been told about it until it came out  
12 in the course of the examination of Mr. True himself.

13                   That is the first knowledge that he had of the  
14 statement that was given in San Francisco, and at that time,  
15 as you read the transcript, there is no reference to a 64  
16 page statement. It simply, did you give me a statement on  
17 June 4th, and that is the first knowledge that Mr. Hardy  
18 had that a statement had been given to Mr. Alexander in  
19 San Francisco.

20 Now, he mentioned also, I am glad to hear him men-  
21 tion, bring the Baxter Shorter statement out in the open.  
22 He said it had been shown to no one, that it had been kept  
23 confidential up to now. The matter of the fact is that  
24 Capt. Hamilton of the Los Angeles P.D. made a copy of that  
25 statement, of that statement available to Walter Wanger and  
26 it was then for the first time I was able to verify what I

1 had heard previously, that the name of Barbara Graham does  
2 not appear in the Baxter Shorter statement. Mr. Leavy made  
3 one point about how far they went ostensibly in helping the  
4 defense in this case by making available some letters upon  
N-2 5 demand. He also mentioned Donna Prow and this Cerriani  
6 matter of the alibi that exploded and it came as a surprise  
7 to Barbara Graham, there is no question of that.

8 And it hinged on a deal involving Donna Prow, a  
9 woman serving time for manslaughter with several months  
10 sentence yet to go, and at the same time that Mr. Hardy told  
11 me that he had no knowledge of this previous statement, he  
12 also told me that the day after, or within a matter of hours  
13 after Donna Prow, the part of Donna Prow in this alibi had  
14 been disclosed for the first time in Court that he, Roy  
15 Hardy, went looking for Donna Prow with a subpoena to put  
16 her on the stand for examination, only to find that Donna  
17 Prow had been taken into another Court and had been released  
18 of her sentence for manslaughter and had been placed on  
19 probation and was gone.

20 They looked high and low for Donna Prow and were  
21 unable to find her. The police maintained they had no idea  
22 where she was. The trial was still in progress while Roy  
23 Hardy was looking for Donna Prow, who played such an important  
24 part in the conviction of Barbara Graham.

25 Now, he said also that John True didn't know where  
26 Burbank was, but subsequently marks here have established

1 that he did know. He had acted as a bodyguard for Tooter  
2 Shearer on at least two occasions when he came from Las  
3 Vegas with money. He knew Tooter Shearer well enough to be  
4 invited to his wedding. He had been in the Monahan home, he  
5 was not in a strange town or a strange territory as Mr.  
6 Leavy would have you believe.

7 Well, I won't go any further, but those are the key  
8 things that I wanted to touch upon.

9 MRS. THOMPSON: Mr. Montgomery, as I recall, it just  
10 seemed to me that on this Donna Prow matter that after that  
11 had been brought by Mr. Hardy, that Mr. Leavy called to  
12 the witness stand a certain officer who had been asked to  
13 locate a couple of witnesses previously by Mr. Hardy and that  
14 he had done so for Mr. Hardy and at his request, and this  
15 officer testified that he never at any time had ever been  
16 asked to locate Donna Prow, that's my recollection.

17 MR. MONTGOMERY: Well, we did check that there had  
18 been a subpoena for Donna Prow and that we do know, and  
19 that --

20 MRS. THOMPSON: I recall that.

21 MR. MONTGOMERY: And that she had been released from  
22 jail and he couldn't find her.

23 CHAIRMAN O'CONNELL: Thank you, Mr. Montgomery.  
24 That concludes the testimony that will be received this  
25 afternoon. The Committee will take this matter under advis-  
26 ment. We have only had the trial transcript for one week,

1 and while we have been able to make some comparison of it  
2 with the earlier statement by John True and with other cir-  
3 cumstances reported to us, we know that it will take a good  
4 deal more time to finalize the situation so that we can make  
5 a determination of what actually happened, and also, on  
6 the basis of what we find, recommend what, if anything, should  
7 be done by way of remedial legislation in the field of  
8 defendants' rights to have disclosed to him evidence which  
9 may be in the hands of the prosecution. Mr. Allen?

10 MR. ALLEN: Well, Mr. Chairman, at least as far as  
11 this Barbara Graham Monahan case is concerned, and the state-  
12 ments which were made at the occasion of our meeting a week  
13 ago, relating to accusations of the suppression of evidence  
14 by the prosecuting attorneys concerned, I think that the  
15 hearings we have conducted on these two days certainly show  
16 that there was no suppression of evidence, and that the  
17 individuals involved in the prosecution of this Graham woman  
18 were men of very high principles.

19 I am personally satisfied of that, and justice was  
20 done, and I don't see anything to be accomplished by trying  
21 to re-hash portions of a long trial such as this before a  
22 legislative committee.

23 We could continue this same type of thing indefinitely  
24 through all sorts of cases still without getting anywhere.

25 As far as the direct allegations that were made  
26 against the characters of the prosecutors concerned, I am

1 satisfied on the basis of what we heard that they are without  
2 foundation.

3 CHAIRMAN O'CONNELL: I will say this, Mr. Allen,  
4 that the basis of what we have heard today, it's my opinion  
5 that the attorneys for Barbara Graham did have knowledge,  
6 or should have had knowledge that there was an earlier state-  
7 ment by the witness John True and apparently made no demand  
8 for such statement, and there is no apparent suppression of  
9 that document.

10 The only question that seems to me at this time  
11 is whether or not the decision made by the prosecution in  
12 that these variances were immaterial was a proper decision to  
13 have made under the circumstances.

14 With that, we are adjourned.

15 (Whereupon, the Chairman adjourned at 6:15 p.m.)

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C E R T I F I C A T E

3 STATE OF CALIFORNIA,) ss.  
4 SACRAMENTO COUNTY.)

6 I, RAYMOND N. MAKES, an Official U. S. Court Reporter  
7 in and for the Northern District of California, Northern  
8 Division, do hereby certify:

9           That I was present at the foregoing hearing, that I  
10    took down in machine shorthand all of the testimony and the  
11    proceedings had therein and that I thereafter caused said  
12    machine shorthand notes to be transcribed into longhand on  
13    the typewriter; that the foregoing transcription of my short-  
14    hand notes is a full, true and correct transcript of the  
15    proceedings had and done during the above hearing.

16 IN WITNESS WHEREOF, I have hereunto caused my hand  
17 to be set this 6th day of April, 1960, A.D.

/s/ Raymond N. Maes  
Official Court Reporter